



<p style="text-align: right;">4277</p> <p>1        UNITED STATES COPYRIGHT ROYALTY JUDGES</p> <p>2                The Library of Congress</p> <p>3        -----X</p> <p>4        IN THE MATTER OF:                )</p> <p>5    ) Docket No.</p> <p>6        DETERMINATION OF CABLE        ) 14-CRB-0010-CD</p> <p>7        ROYALTY FUNDS                    ) (2010-2013)</p> <p>8        -----X</p> <p>9        BEFORE:        THE HONORABLE SUZANNE BARNETT</p> <p>10                        THE HONORABLE JESSE M. FEDER</p> <p>11                        THE HONORABLE DAVID R. STRICKLER</p> <p>12</p> <p>13                        Library of Congress</p> <p>14                        Madison Building</p> <p>15                        101 Independence Avenue, S.E.</p> <p>16                        Washington, D.C.</p> <p>17                        March 19, 2018</p> <p>18</p> <p>19                        9:23 a.m.</p> <p>20                        VOLUME XVIII</p> <p>21</p> <p>22</p> <p>23        Reported by:    Joe W. Strickland, RPR, CRR, CRC</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4279</p> <p>1        APPEARANCES (Continued):</p> <p>2        On behalf of Program Suppliers:</p> <p>3                        GREGORY O. OLANIRAN, ESQ.</p> <p>4                        LUCY HOLMES PLOVNICK, ESQ.</p> <p>5                        ALESHA M. DOMINIQUE, ESQ.</p> <p>6                        ALBINA GASANBEKOVA, ESQ.</p> <p>7                        DIMA BUDRON, ESQ.</p> <p>8                        Mitchell Silberberg &amp; Knupp LLP</p> <p>9                        1818 N Street, N.W., 8th Floor</p> <p>10                        Washington, D.C. 20036</p> <p>11                        202-355-7917</p> <p>12</p> <p>13        On behalf of Public Television Claimants:</p> <p>14                        RONALD G. DOVE, Jr., ESQ.</p> <p>15                        DUSTIN CHO, ESQ.</p> <p>16                        ROBERT N. HUNZIKER, JR., ESQ.</p> <p>17                        Covington &amp; Burling LLP</p> <p>18                        One CityCenter</p> <p>19                        850 Tenth Street, N.W.</p> <p>20                        Washington, D.C. 20001</p> <p>21                        202-662-4956</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">4278</p> <p>1        A P P E A R A N C E S:</p> <p>2        On behalf of Joint Sports Claimants:</p> <p>3                        ROBERT ALAN GARRETT, ESQ.</p> <p>4                        M. SEAN LAANE, ESQ.</p> <p>5                        DANIEL A. CANTOR, ESQ.</p> <p>6                        MICHAEL KIENTZLE, ESQ.</p> <p>7                        BRYAN L. ADKINS, ESQ.</p> <p>8                        Arnold &amp; Porter Kaye Scholer LLP</p> <p>9                        601 Massachusetts Avenue, N.W.</p> <p>10                        Washington, D.C. 20001</p> <p>11                        202-942-5000</p> <p>12</p> <p>13                        IAIN R. McPHIE, ESQ.</p> <p>14                        Squire Patton Boggs LLP</p> <p>15                        2500 M Street, N.W.</p> <p>16                        Washington, D.C. 20037</p> <p>17                        202-626-6688</p> <p>18        On behalf of Commercial Television Claimants:</p> <p>19                        JOHN I. STEWART, Jr., ESQ.</p> <p>20                        DAVID ERVIN, ESQ.</p> <p>21                        ANN MACE, ESQ.</p> <p>22                        Crowell &amp; Moring LLP</p> <p>23                        1001 Pennsylvania Avenue, N.W.</p> <p>24                        Washington, D.C. 20004</p> <p>25                        202-624-2685</p>	<p style="text-align: right;">4280</p> <p>1        APPEARANCES (Continued):</p> <p>2        On behalf of Canadian Claimants Group:</p> <p>3                        L. KENDALL SATTERFIELD, ESQ.</p> <p>4                        Satterfield PLLC</p> <p>5                        1629 K Street, N.W., Suite 300</p> <p>6                        Washington, D.C. 20006</p> <p>7                        202-355-6432</p> <p>8</p> <p>9                        VICTOR J. COSENTINO, ESQ.</p> <p>10                        Larson &amp; Gaston, LLP</p> <p>11                        200 S. Los Robles Avenue, Suite 530</p> <p>12                        Pasadena, CA 91101</p> <p>13                        626-795-6001</p> <p>14</p> <p>15        On behalf of Settling Devotional Claimants:</p> <p>16                        ARNOLD P. LUTZKER, ESQ.</p> <p>17                        BENJAMIN STERNBERG, ESQ.</p> <p>18                        Lutzker &amp; Lutzker LLP</p> <p>19                        1233 20th Street, N.W., Suite 703</p> <p>20                        Washington, D.C. 20036</p> <p>21                        202-408-7600</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">4281</p> <p>1 APPEARANCES (Continued):  2 On behalf of Settling Devotional Claimants:  3 MATTHEW J. MacLEAN, ESQ.  4 MICHAEL A. WARLEY, ESQ.  5 JESSICA T. NYMAN, ESQ.  6 Pillsbury Winthrop Shaw Pittman LLP  7 1200 Seventeenth Street, N.W.  8 Washington, D.C. 20036  9 202-663-8183  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">4283</p> <p>1 University and Carleton College, and a law  2 degree from Stanford Law School.  3 Q. Can you please give us an overview of  4 your professional background.  5 A. Over 20 years in the cable television  6 business as a programming executive working for  7 large cable companies, and more recently,  8 consulting.  9 Q. Where do you work currently?  10 A. Hamilton Media LLC.  11 Q. And what is your position at Hamilton  12 Media?  13 A. Founder and Principal.  14 Q. We will come back to Hamilton Media in  15 just a minute, but before we do that where did  16 you work immediately prior to Hamilton Media?  17 A. My last corporate job was at Charter  18 Communications.  19 Q. Can you tell us about the different  20 roles you had at Charter and the  21 responsibilities associated with those roles?  22 A. My role as head of the Programming  23 Department initially, as senior vice president,  24 and then I was promoted to executive vice  25 president.</p>
<p style="text-align: right;">4282</p> <p>1 P R O C E E D I N G S  2 (9:23 a.m.)  3 JUDGE BARNETT: Good morning. All but  4 the Witness; please be seated. Welcome back,  5 Mr. Strickland.  6 THE REPORTER: Thank you.  7 JUDGE BARNETT: Please raise your  8 right hand.  9 Whereupon,  10 SUE HAMILTON  11 was called as a witness and, having been first duly  12 sworn, was examined and testified as follows:  13 JUDGE BARNETT: Please be seated.  14 Ms. Plovnick?  15 DIRECT EXAMINATION  16 BY MS. PLOVNIK:  17 Q. Good morning, Ms. Hamilton. My name  18 is Lucy Plovnick, and I represent the Program  19 Suppliers in this proceeding. How are you?  20 A. Fine, thank you.  21 Q. Would you state your name and spell it  22 for the record.  23 A. Sue Hamilton, S-U-E, H-A-M-I-L-T-O-N.  24 Q. What is your educational background?  25 A. Liberal arts undergrad at Northwestern</p>	<p style="text-align: right;">4284</p> <p>1 Q. Now, did those responsibilities relate  2 to programming decision-making?  3 A. Yes, yes, I was the ultimate  4 decision-maker.  5 Q. And did that include responsibilities  6 with regard to distant signals?  7 A. Yes.  8 Q. Now, when you were at Charter, were  9 you the person responsible for making  10 programming decisions with regard to distant  11 signals?  12 A. Yes.  13 Q. How many Charter systems were you  14 responsible for making programming decisions on  15 while at Charter?  16 A. All of them. It was many hundreds of  17 systems that covered over 40 States at the  18 time.  19 Q. And were those large systems and small  20 systems?  21 A. Yes.  22 Q. About how many large or Form 3 systems  23 would you say?  24 A. I would say roughly 100.  25 Q. How long were you at Charter?</p>

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<p>1 A. Nearly four years.</p> <p>2 Q. And did you receive any awards or</p> <p>3 recognitions while you were at Charter?</p> <p>4 A. I received several awards. I was</p> <p>5 named to the Cablefax 100 Most Influential</p> <p>6 People in cable a couple of those years. And</p> <p>7 three of those years, named as one of the 50</p> <p>8 Most -- I think -- Influential Women in Cable.</p> <p>9 I was a Wonder Woman in 2006. That was an</p> <p>10 accolade that was given by Multichannel News</p> <p>11 and Women in Cable and Telecommunications.</p> <p>12 Q. After leaving Charter, did you</p> <p>13 continue to do any work for them?</p> <p>14 A. I consulted for them for about -- I</p> <p>15 can't remember how long -- nine months to a</p> <p>16 year.</p> <p>17 Q. And before you were working at</p> <p>18 Charter, what were you doing?</p> <p>19 A. Immediately prior to that, I was the</p> <p>20 acting head of programming for Adelphia</p> <p>21 Communications. While they were in bankruptcy,</p> <p>22 they weren't able to appoint me to an executive</p> <p>23 position at the time, and ultimately I went</p> <p>24 over to Charter before they came out of</p> <p>25 bankruptcy.</p>	<p>1 Tele-Communications Incorporated, where I</p> <p>2 started in cable in 1993.</p> <p>3 And more recently, GCI Liberty, which</p> <p>4 is also controlled by a Liberty Media</p> <p>5 affiliate.</p> <p>6 Q. Why were you chosen for those boards?</p> <p>7 A. I would hope for my business acumen,</p> <p>8 and in particular for my cable experience, I</p> <p>9 would guess, for GCI Liberty.</p> <p>10 Q. Turning back to your consulting work</p> <p>11 for Hamilton Media, what sort of consulting</p> <p>12 work do you do at Hamilton Media?</p> <p>13 A. I represent big, small -- kind of done</p> <p>14 it all -- both content providers and</p> <p>15 distributors, disruptive content -- excuse me,</p> <p>16 disruptive distributors, including</p> <p>17 over-the-top, satellite companies, cable</p> <p>18 companies; a variety of things, broadcasters,</p> <p>19 cable networks.</p> <p>20 JUDGE BARNETT: Could you describe</p> <p>21 over-the-top for us new initiates.</p> <p>22 THE WITNESS: Sure. Of course, of</p> <p>23 course. A number of different entities have</p> <p>24 begun delivering -- aggregating content and</p> <p>25 delivering it in packages over the Internet,</p>
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<p>1 Q. What were your responsibilities at</p> <p>2 Adelphia while you were in that role?</p> <p>3 A. The same. Programming acquisitions,</p> <p>4 content acquisitions.</p> <p>5 Q. Before you were working at Adelphia,</p> <p>6 where did you work?</p> <p>7 A. That would have been AT&amp;T Broadband.</p> <p>8 That was the name of the company that succeeded</p> <p>9 Tele-Communications, Incorporated, TCI, where I</p> <p>10 started.</p> <p>11 Q. And what was your role at AT&amp;T and</p> <p>12 TCI?</p> <p>13 A. One of several lieutenants to the head</p> <p>14 of the programming department.</p> <p>15 Q. And prior to working at AT&amp;T, what</p> <p>16 were you doing?</p> <p>17 A. Immediately prior, I was a partner at</p> <p>18 Kirkland &amp; Ellis.</p> <p>19 Q. Ms. Hamilton, are you on any public</p> <p>20 boards that are related to the cable industry?</p> <p>21 A. Related to the cable industry? I</p> <p>22 suppose, yes, two. One is FTD Inc., which is</p> <p>23 an affiliate of Liberty Interactive, a company</p> <p>24 that is controlled by John Malone, who had been</p> <p>25 the Chairman and CEO of TCI,</p>	<p>1 rather than over a cable wire. So that you are</p> <p>2 kind of -- anyone is able to get it if they</p> <p>3 have an Internet connection.</p> <p>4 JUDGE BARNETT: Thanks.</p> <p>5 BY MS. PLOVNICK:</p> <p>6 Q. What kind of clients do you work with?</p> <p>7 A. A variety, large and small.</p> <p>8 Q. Have you worked with any collectives</p> <p>9 of cable systems?</p> <p>10 A. Yes, I worked for the National Cable</p> <p>11 Television Cooperative, which is a co-op -- a</p> <p>12 buying cooperative, basically, of a number of</p> <p>13 smaller and mid-size cable companies.</p> <p>14 Q. Have you done work for broadcast</p> <p>15 networks?</p> <p>16 A. Yes.</p> <p>17 Q. For cable operators?</p> <p>18 A. Yes.</p> <p>19 Q. Cable networks?</p> <p>20 A. Yes.</p> <p>21 Q. So when you've done the consulting</p> <p>22 work for these companies, what kind of projects</p> <p>23 did you do?</p> <p>24 A. Everything from negotiating the actual</p> <p>25 distribution deals for the content, both for</p>

<p style="text-align: right;">4289</p> <p>1 the content provider and for the distributor;  2 to strategic planning; to financial  3 forecasting; creating business models;  4 everything.  5 Q. Have you negotiated agreements with  6 any major CSOs over the last ten years?  7 A. I've negotiated agreements with all of  8 them.  9 Q. And which ones?  10 A. Comcast, DirectTV, AT&amp;T, Dish Network,  11 Verizon, Charter, Cox, Suddenlink, Altice. A  12 variety.  13 Q. What kind of agreements were those?  14 A. Those were all distribution agreements  15 for content.  16 Q. And when you say content, does that  17 mean programming?  18 A. Yes, programming networks.  19 Q. Have you conducted valuation analysis  20 of television programming of the parties in  21 your work?  22 A. I guess I would argue that all of my  23 work involves valuation of content and  24 programming, yeah.  25 Q. Have you ever been asked to provide</p>	<p style="text-align: right;">4291</p> <p>1 survey that has been conducted by the Program  2 Suppliers.  3 Q. So please take a look at the black  4 binder in front of you with the green cover and  5 turn to Exhibit 6008. It's on the screen, as  6 well.  7 A. I have it.  8 Q. Ms. Hamilton, what is the title of  9 Exhibit 6008?  10 A. Direct Testimony of Sue Ann R.  11 Hamilton.  12 Q. Is Exhibit 6008 your Direct Testimony  13 for this proceeding?  14 A. Yes.  15 Q. Do you have any corrections to  16 Exhibit 6008?  17 A. No.  18 Q. Please turn to Exhibit 6009. Let me  19 know when you are there. Do you have it?  20 A. I have it.  21 Q. What is the title of that document?  22 A. Rebuttal Testimony of Sue Ann R.  23 Hamilton.  24 Q. Is Exhibit 6009 your Rebuttal  25 Testimony for this proceeding?</p>
<p style="text-align: right;">4290</p> <p>1 expert testimony as a part of your work?  2 A. Yes.  3 Q. And have you ever been accepted as an  4 expert witness by a Court in any prior  5 proceeding?  6 A. Yes.  7 Q. In which proceeding?  8 A. I represented Dish Network in Federal  9 District Court in Oregon.  10 MS. PLOVNIK: Your Honors, I would  11 move to tender Ms. Hamilton as an expert in the  12 valuation of television programming in the  13 cable industry.  14 JUDGE BARNETT: Ms. Hamilton is so  15 qualified.  16 BY MS. PLOVNIK:  17 Q. Ms. Hamilton, what were you asked to  18 do for this proceeding?  19 A. I was asked to evaluate the selection  20 and other processes for -- for making  21 programming decisions at cable companies  22 specifically, and to review the programming  23 categories that have been constructed for  24 purposes of reviewing Copyright Royalties and  25 looking at the Bortz survey, as well as the</p>	<p style="text-align: right;">4292</p> <p>1 A. Yes.  2 Q. Do you have any corrections to  3 Exhibit 6009?  4 A. Yes, I have one correction.  5 Q. What is that correction?  6 A. It is to Footnote 2, I think it is on  7 page 9. Yes, I would like to correct the  8 percentages in that footnote to be consistent  9 with those that were corrected by Dr. Gray.  10 Q. All right. So just so this doesn't  11 become a memory exercise, would you turn to  12 Exhibit 6036 which was admitted and is  13 Dr. Gray's testimony. And that is in the other  14 binder.  15 A. All right.  16 Q. And if you turn to page 16 of Exhibit  17 6036, which is also showing on the screen. And  18 you can look at the paper copy.  19 A. Great. I have it.  20 Q. Is this the table in Dr. Gray's  21 testimony that you relied on for Footnote 2 in  22 your Rebuttal Testimony?  23 A. Yes, it is.  24 Q. And what percentages should there be  25 in Footnote 2 of your Rebuttal Testimony?</p>

<p style="text-align: right;">4293</p> <p>1 A. With respect to the compensable  2 retransmissions, I'd like to correct that in  3 2012, that should be .12 percent, rather than  4 .13 percent. In 2013, it should be  5 .21 percent, rather than .22 percent. And then  6 for the JSC's share of all distant signal  7 volume, those numbers should be .66 percent in  8 2010, .70 percent in 2011, .49 percent in 2012,  9 and .73 percent in 2013.</p> <p>10 Q. Thank you, Ms. Hamilton. With those  11 corrections, do you declare Exhibits 6008 and  12 6009 to be true and correct?</p> <p>13 A. Yes.</p> <p>14 Q. All right. You can take it down.</p> <p>15 Now, Ms. Hamilton, let's talk about  16 your Direct Testimony, which is Exhibit 6008.  17 You testified that you worked at Charter for  18 several years?</p> <p>19 A. Yes.</p> <p>20 Q. And since leaving Charter, you've  21 continued to work with cable operators and the  22 cable television industry?</p> <p>23 A. That's correct.</p> <p>24 Q. Over the course of your time working  25 in the cable industry, has the cable industry</p>	<p style="text-align: right;">4295</p> <p>1 that we were going to be acquired by another  2 company, which ultimately didn't happen. But  3 there has been a trend towards consolidation.</p> <p>4 JUDGE STRICKLER: Thank you.</p> <p>5 BY MS. PLOVNICK:</p> <p>6 Q. And you mentioned when you were  7 working at Charter you were responsible for  8 many cable systems, large and small. And your  9 decision-making included distant signals for  10 all of those systems?</p> <p>11 A. It was under my auspices, yes.</p> <p>12 Q. When you were at Charter, were any  13 programming decisions made at the individual  14 system level?</p> <p>15 A. The ultimate decision was mine, no.  16 There was certainly input from the field, as we  17 called it, from the systems.</p> <p>18 Q. So why was decision-making  19 consolidated as you testified?</p> <p>20 A. Well, I think the consolidation has  21 not been limited to the distribution side.  22 There has been quite a bit of consolidation on  23 the network side as well. So as the content  24 companies themselves have become larger and  25 more -- with different elements, broadcast</p>
<p style="text-align: right;">4294</p> <p>1 changed?</p> <p>2 A. Yes.</p> <p>3 Q. How has it changed?</p> <p>4 A. The cable industry has become much  5 more consolidated. A number of companies have  6 joined together, have merged, and the companies  7 themselves are larger and operate more on a  8 centralized corporate level.</p> <p>9 Q. Has that consolidation had an impact  10 on the way that cable operators make  11 programming decisions?</p> <p>12 A. Yes, I think the decision-making has  13 become more centralized, as well.</p> <p>14 Q. When you were at Charter, you were  15 responsible for making programming decisions;  16 correct?</p> <p>17 A. Yes.</p> <p>18 JUDGE STRICKLER: Excuse me,  19 Ms. Hamilton. Good morning. When did this  20 change to centralized decision-making as it  21 related to programming occur? What year?</p> <p>22 THE WITNESS: Well, it's been an  23 evolution, I would say. It has been a trend  24 since I joined the industry in 1993. On the  25 third day of my employment, it was announced</p>	<p style="text-align: right;">4296</p> <p>1 network and cable networks have joined  2 together, for example, there has been a very  3 high level of strategy and frankly more dollars  4 involved. And so many more decisions are held  5 at the highest level of the company.</p> <p>6 Q. When you needed to make a programming  7 decision as a cable operator, what factors did  8 you consider or think were important in making  9 those decisions?</p> <p>10 A. Just a number of different --  11 different factors. The viewership that I could  12 actually demonstrate or that I could predict  13 would occur. Certainly the legacy of the  14 carriage, if a channel had been on, the  15 tendency was to allow it to remain on our  16 channel lineup.</p> <p>17 Bundling is a huge factor and became  18 more and more so during my time as a  19 distributor as networks used leverage to  20 influence carriage of other channels. And  21 finally the cost was always a factor.</p> <p>22 Q. Ms. Hamilton, did you prepare a  23 demonstrative slide to assist with summarizing  24 these points?</p> <p>25 A. Yes, I did.</p>

<p style="text-align: right;">4297</p> <p>1            MS. PLOVNICK: Albina, could you  2 please put on Slide Number 1.  3 BY MS. PLOVNICK:  4        Q.    We are hopefully going to make that  5 large enough for everyone to see.  6            All right. So Ms. Hamilton, are these  7 the four factors that you just mentioned?  8        A.    Yes, they are.  9        Q.    Let's talk about the first factor  10 which is subscriber viewing behavior.  11        A.    Yes.  12        Q.    Can you please tell us why as a CSO  13 you would consider subscriber viewing in your  14 programming decision?  15        A.    That is the stock and trade of our  16 cable company, primarily -- especially in those  17 days when that was literally the only service  18 being offered by the company, a video business,  19 we needed to attract and retain subscribers.  20 And the only thing that we were selling was the  21 variety of programming that we could make  22 available.  23        Q.    So the second factor you mentioned was  24 legacy carriage. Why was that important in  25 your decision-making?</p>	<p style="text-align: right;">4299</p> <p>1            JUDGE STRICKLER: Were there  2 situations ever where legacy carriage had  3 viewing over time that was so low that your  4 need to consider viewing was such that you  5 still had to eliminate legacy carriage because  6 of low viewing?  7            THE WITNESS: It was rare. We did  8 cost benefit analyses and I would add point  9 number four, frankly, I think those are  10 inextricably linked. It doesn't take losing  11 very many subscribers before it's not a wise  12 decision or rational decision to take  13 programming off. So inertia tends to carry.  14            But, yes, certainly we looked at that  15 frequently.  16            JUDGE STRICKLER: So am I correct to  17 understand your testimony that you would keep  18 legacy carriage even with low viewing.  19            THE WITNESS: Occasionally, yes.  20            JUDGE STRICKLER: Occasionally or  21 consistently?  22            THE WITNESS: More consistently than I  23 would like.  24            JUDGE STRICKLER: So there is no -- I  25 won't ask you the next question. Thank you.</p>
<p style="text-align: right;">4298</p> <p>1        A.    It's important to provide a level of  2 continuity to customers. Every channel has its  3 constituency regardless of its absolute  4 viewership numbers. There is always someone  5 who is happy to keep watching a channel and  6 it's very expensive to lose a subscriber. And  7 that has been even exacerbated by the -- or  8 enhanced, I guess -- by the different product  9 offering now that the mix that cable companies  10 are offering, it is not just video. It's also  11 Internet service and telephone service, land  12 line telephone service. So it's in most cases  13 much more economic to maintain the cost than to  14 risk losing subscribers.  15        Q.    The term legacy carriage, can you  16 define that term?  17        A.    That was just a term of art that I've  18 used. I think it's used in the industry. It  19 would be associated with anyone that has been  20 on for a while.  21            JUDGE STRICKLER: Excuse me,  22 Ms. Hamilton. I wanted to ask you a question  23 about the interrelationship of points 1 and 2  24 on your screen.  25            THE WITNESS: Sure.</p>	<p style="text-align: right;">4300</p> <p>1            BY MS. PLOVNICK:  2        Q.    So the third point you mentioned were  3 bundling considerations. What do you mean by  4 bundling?  5        A.    Again, that's sort of a term of art in  6 the industry. It involves tying of one network  7 to one or more other networks. I think  8 originally, we saw a lot of this with the  9 network consolidations. And, in particular,  10 when retransmission consent became law in 1993,  11 a lot of broadcast networks used that leverage  12 to either launch or further the distribution of  13 other networks, cable networks included.  14        Q.    Was bundling important or related to  15 decision-making with regard to distant signals?  16        A.    Not often, but yes.  17        Q.    And during your time as a CSO, were  18 there any distant signals for which bundling  19 was an important consideration?  20        A.    Yes, the WGN signal was -- and in this  21 case, it was not necessarily a formal  22 arrangement, but it was tied to carriage of  23 Tribune broadcast stations.  24        Q.    Can you tell us a little bit more  25 about that?</p>

<p style="text-align: right;">4301</p> <p>1        A.     Sure. Those deals were negotiated in  2        tandem. And in my case, at least at Charter,  3        having inherited pretty broad carriage of WGN,  4        that was table stakes for negotiating the  5        Tribune Media retrans deal.  6        Q.     Based on your experience, why would a  7        CSO want to carry WGN as a distant signal?  8        A.     To enable or otherwise benefit the  9        Tribune retransmission consent. Tribune Media  10       stations are very strong stations. They're all  11       Big Four network affiliates, I believe. And so  12       those being must-have, and WGN being part of  13       the negotiation, it would be necessary to,  14       again, not make the decision to launch WGN, but  15       to perpetuate its carriage.  16       JUDGE STRICKLER: In connection with  17       that point that you just made on page 7 of your  18       testimony, you reference a time frame. And the  19       time frame you reference is, quote, "during the  20       period from 1994 through at least 2010." I  21       don't know if you see it there or you recall  22       the testimony.  23       THE WITNESS: Sure.  24       JUDGE STRICKLER: It's page 7 of your  25       written Direct Testimony, Exhibit 6008. Why</p>	<p style="text-align: right;">4303</p> <p>1       BY MS. PLOVNICK:  2       Q.     So let's talk about the third  3       factor -- well, actually before I go there,  4       Ms. Hamilton, are you aware that Mr. Singer and  5       Hartman criticized your testimony regarding the  6       reasons that a CSO would want to carry WGN as a  7       distant signal?  8       A.     I am aware of that.  9       Q.     Do you have a response to those  10       criticisms?  11       A.     Their experience apparently is  12       different from mine in terms of the deals that  13       were negotiated and presented. I don't know if  14       they have worked on those deals or not. I  15       think in the case of DirecTV, they had a very  16       different -- different regime for carriage of  17       WGN and retrans for Tribune.  18       Q.     Is that because DirecTV is a satellite  19       carrier?  20       A.     Yes.  21       Q.     The last thing you talked about that  22       was important to you as a CSO in making  23       preliminary decisions was cost. And can you  24       explain to the Judges why cost was important?  25       A.     Cost is very important because the</p>
<p style="text-align: right;">4302</p> <p>1       the relatively vague end date in terms of your  2       time frame through at least 2010? Why can't  3       you specify a more specific time period?  4       THE WITNESS: That is the last set of  5       negotiations that I have any familiarity with.  6       I haven't directly negotiated any deals with  7       Tribune Media, certainly, since 2010.  8       JUDGE STRICKLER: So you just can't  9       speak to whether this factor of bundling --  10       with regard to bundling continued beyond 2010  11       out of your own personal experience?  12       THE WITNESS: That's correct.  13       JUDGE STRICKLER: Thank you.  14       BY MS. PLOVNICK:  15       Q.     Would the deal negotiated in 2010 have  16       had applications for the years following 2010?  17       A.     To the extent that both parties wanted  18       to extend the terms, yes.  19       JUDGE STRICKLER: Well, counsel's  20       question was conditional. I want to change the  21       question a little bit. The question I'm more  22       interested in is not would it have continued  23       beyond 2010; did it continue beyond 2010, if  24       you know?  25       THE WITNESS: I have no idea. Sorry.</p>	<p style="text-align: right;">4304</p> <p>1       profit margins of cable companies have  2       progressively shrunk over my 20-plus years in  3       the industry. The expense of providing content  4       is greater and greater and the ability to  5       charge customers, subscribers more is limited.  6       And so it's important to protect that margin in  7       deciding -- in making programming decisions.  8       JUDGE FEDER: How big a factor is  9       retransmitted broadcast stations in determining  10       cost to a cable system?  11       THE WITNESS: Retransmission consent  12       is a huge factor.  13       JUDGE FEDER: Putting aside  14       retransmission consent, I'm talking about what  15       we are concerned with here.  16       THE WITNESS: The distant signals?  17       JUDGE FEDER: The Copyright Royalties  18       for distant signals.  19       THE WITNESS: That's very small.  20       JUDGE STRICKLER: I just want to make  21       sure I understand your answer to the Judge's  22       question, because on page 8 you say, "The cost  23       associated with carrying distant stations was  24       immaterial." So that is different than the  25       retransmission consent cost?</p>



4305	4307
<p>1 THE WITNESS: Yes, local station</p> <p>2 retransmission consent has become very</p> <p>3 expensive.</p> <p>4 JUDGE STRICKLER: You're talking about</p> <p>5 local, not distant?</p> <p>6 THE WITNESS: Yes, but distant is</p> <p>7 very, very small. The distant signal</p> <p>8 Copyright, the compulsory.</p> <p>9 JUDGE STRICKLER: Okay. So you said</p> <p>10 in response to Counsel's question a moment ago</p> <p>11 that cost is very important, but as it relates</p> <p>12 to distant retransmission cost is immaterial.</p> <p>13 How do those two reconcile?</p> <p>14 THE WITNESS: Those are correct. The</p> <p>15 cost of content writ large is a big</p> <p>16 consideration. And relative to all of the</p> <p>17 other content that is being provided, the cost</p> <p>18 of distant signals is very small. So it is</p> <p>19 less of a factor, but cost generally is a major</p> <p>20 factor.</p> <p>21 JUDGE STRICKLER: Thank you.</p> <p>22 BY MS. PLOVNICK:</p> <p>23 Q. You actually fixed some of my next</p> <p>24 questions here. What percentage of your</p> <p>25 programming budget when you were a cable system</p>	<p>1 Q. In distant signal decisions?</p> <p>2 A. It would be cost, because it was in</p> <p>3 absolute terms and relative terms so small.</p> <p>4 JUDGE STRICKLER: I want to go back</p> <p>5 for a moment to your testimony with regard to</p> <p>6 WGN, sort of the forced bundling that you spoke</p> <p>7 of before.</p> <p>8 THE WITNESS: Yes.</p> <p>9 JUDGE STRICKLER: Given that that</p> <p>10 forced bundling was the reason you had to</p> <p>11 carry -- if I understand your testimony</p> <p>12 correctly -- WGN as a distant signal, is it</p> <p>13 fair to say that, therefore, the decision to</p> <p>14 carry WGN wasn't based on viewing or</p> <p>15 subscribership or program content, but simply</p> <p>16 because of the, for lack of a better word,</p> <p>17 coercion by Tribune? That if you want our</p> <p>18 other valuable stations, you are going to have</p> <p>19 to add WGN to the package?</p> <p>20 THE WITNESS: That's fair. And in my</p> <p>21 case it wasn't adding WGN, it was just</p> <p>22 continuing carriage that had been -- that I</p> <p>23 inherited.</p> <p>24 JUDGE STRICKLER: So separate and</p> <p>25 apart from your testimony about legacy</p>
4306	4308
<p>1 operator would be devoted to distant signal</p> <p>2 programming?</p> <p>3 A. I don't know the exact number, but a</p> <p>4 very small percentage. Probably 1 percent. I</p> <p>5 don't know. I'm just guessing.</p> <p>6 Q. Did you consider that a significant</p> <p>7 percentage of your total programming?</p> <p>8 A. No, no.</p> <p>9 Q. And so was cost an important factor to</p> <p>10 you as a CSO in deciding what distant signals</p> <p>11 to carry?</p> <p>12 A. No, it was a fairly -- it was a</p> <p>13 constant budget number that I carried over from</p> <p>14 year to year.</p> <p>15 Q. So out of these four factors we've</p> <p>16 been talking about and that are shown on the</p> <p>17 demonstrative, if you had to rank them in terms</p> <p>18 of importance, what would be the most important</p> <p>19 factor to a cable system operator in selecting</p> <p>20 distant signals to carry?</p> <p>21 A. I would say the viewing behavior, the</p> <p>22 viewership.</p> <p>23 Q. What would be the least important</p> <p>24 factor?</p> <p>25 A. In the distant signal decision?</p>	<p>1 carriage, the reason you continued it was</p> <p>2 Tribune -- again, for lack of a better</p> <p>3 phrase -- made you an offer that you couldn't</p> <p>4 refuse?</p> <p>5 THE WITNESS: Correct.</p> <p>6 BY MS. PLOVNICK:</p> <p>7 Q. If you turn to pages 9 through 10 of</p> <p>8 Exhibit 6008, your Direct Testimony, now. Tell</p> <p>9 me when you're there.</p> <p>10 A. Okay.</p> <p>11 Q. So we are going to get this on the</p> <p>12 screen as well. Working on it. Page 9 once</p> <p>13 again. Pages 9 and 10. All right. So in</p> <p>14 pages 9 to 10, you had talked about the</p> <p>15 different programming category definitions the</p> <p>16 Judges adopted for this proceeding. Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. Are these programming category</p> <p>20 definitions the same as the genres of</p> <p>21 programming that would commonly be used in the</p> <p>22 cable industry?</p> <p>23 A. No.</p> <p>24 Q. So how are they different?</p> <p>25 A. These are very technical and I guess</p>

<p style="text-align: right;">4309</p> <p>1    nuanced. They don't really comport with the  2    typical categorization that I would think of in  3    the cable industry.  4        Q.    Are there any program categories in  5    use in this proceeding that stand out to you as  6    problematic?  7        A.    I think the Program Suppliers  8    definition is confusing. It's not at all  9    apparent that there would be any Sports  10   included in that definition at all.  11       Q.    How about the Joint Sports Claimants  12   definition?  13       A.    I think that is -- on its face, I  14   understand it. I don't think that it is  15   typical to limit sports to live professional  16   and college team sports. I think that sports  17   is typically seen as a broader category than  18   that.  19       Q.    Is non-team sports referenced anywhere  20   in these programming decisions?  21       A.    No.  22       Q.    Where would non-team sports fall  23   within these technical definitions?  24       A.    If I didn't know, I would not be able  25   to guess.</p>	<p style="text-align: right;">4311</p> <p>1    evaluating it?  2        A.    I think you would have to be a very  3    sophisticated executive, programming-focused  4    and experienced cable or television content  5    supplier to understand that definition. I  6    don't think it would be apparent to the person  7    who -- who hasn't been educated on the  8    specificity of that category.  9        Q.    Do you believe the Bortz respondents  10   were sophisticated in this way?  11       A.    No, I don't.  12       JUDGE STRICKLER: You find the  13   definition of Joint Sports Claimants, the  14   actual words being used, to be difficult to  15   understand? I am asking that, as opposed to  16   whether or not you can in one's mind as a cable  17   operator representative answering the survey  18   apportion value to professional and college  19   sports, team sports, versus other sports.  20       But you are -- taking the first part,  21   you find the actual language of the definition  22   of Joint Sports Claimants to be difficult for a  23   cable operator representative to understand?  24       THE WITNESS: Not the actual words,  25   no.</p>
<p style="text-align: right;">4310</p> <p>1        Q.    And what are non-team sports?  2        A.    Everything from NASCAR racing to  3    Olympic Sports, to pro wrestling, MMA, tennis,  4    golf.  5        Q.    Ms. Hamilton, are you familiar with  6    the Bortz survey?  7        A.    Yes.  8        Q.    When you were a cable operator do you  9    know if you were ever a respondent to the Bortz  10   survey?  11       A.    I don't know if I was ever a  12   respondent to the Bortz survey. I know that I  13   have responded to similar surveys, if it wasn't  14   Bortz itself.  15       Q.    Similar surveys in that they asked you  16   to evaluate distant signal programming?  17       A.    It was some type of valuation of  18   broadcast. I imagine it might have been  19   distant signal; I don't know.  20       Q.    All right. Based on your experience  21   working in the cable industry, do you think  22   respondents to the Bortz survey would  23   understand that live team sports was limited to  24   only include live sports telecast and would  25   also not lump in non-team sports when</p>	<p style="text-align: right;">4312</p> <p>1        JUDGE STRICKLER: So what part of it  2    is difficult to understand?  3        THE WITNESS: I think that it is -- I  4    think there is a tendency to hear sports and  5    just think that that would encompass all  6    sports. I think reading and carefully parsing  7    the words, it's not difficult.  8        JUDGE BARNETT: You indicated that you  9    were aware of these category definitions for  10   purposes of this proceedings before this Board.  11   Is that generally true among -- was that  12   generally true among your peers, programming  13   executives at other cable systems, that they  14   understood that we have these category  15   definitions that might be slightly different  16   from what would be intuitive to them?  17       THE WITNESS: I don't believe it is.  18   BY MS. PLOVNIK:  19       Q.    Let's just take one of the non-team  20   sports that you mentioned, NASCAR, as an  21   example. Do you think the respondents to the  22   Bortz survey would understand that NASCAR fell  23   into Syndicated Programming category?  24       A.    I don't think they would, no.  25       Q.    Do you think -- how about golf</p>

<p style="text-align: right;">4313</p> <p>1 tournaments? Do you think they would  2 understand where to place those?  3 A. No.  4 Q. Tennis matches?  5 A. No.  6 Q. How about professional wrestling?  7 A. No.  8 Q. As a CSO, would you consider these  9 types of programming that we just talked about  10 as sports programming?  11 A. Yes.  12 Q. As a CSO, would you understand that  13 these non-team sports I just mentioned fall  14 into Syndicated Programming categories?  15 A. No, that seems sort of nonsensical to  16 me, frankly.  17 Q. So is it fair to say that in your  18 opinion the cable operators who responded to  19 the Bortz survey would consider the categories  20 confusing?  21 A. The particular type of respondents I  22 think would find it very confusing, yes.  23 Q. Ms. Hamilton, are aware that  24 Mr. Singer and Mr. Hartman criticized your  25 testimony on this issue and contended that the</p>	<p style="text-align: right;">4315</p> <p>1 cable industry, in your opinion has the volume  2 of live team sports programming on distant  3 signals increased or decreased over time?  4 A. It's decreased.  5 Q. Do you expect that trend to continue?  6 A. Yes.  7 Q. Would you expect sports migration to  8 have an impact on the value of live team sports  9 programming on distant signals?  10 A. I would expect it to, yes.  11 JUDGE STRICKLER: So live team sports,  12 because of the migration to regional sports  13 networks and elsewhere, caused a loss of what  14 you might call -- and correct me if I am  15 wrong -- legacy carriage? Because it used to  16 be on distantly retransmitted stations and then  17 it migrated to something else, so it's no  18 longer a legacy of the distantly retransmitted.  19 It's gone in that regard?  20 THE WITNESS: If you are asking  21 whether that has resulted in the removal of  22 those channels, I don't know the answer to  23 that. It certainly has been a loss of the  24 content itself from the broadcast signals.  25 JUDGE STRICKLER: And because loss of</p>
<p style="text-align: right;">4314</p> <p>1 Bortz survey categories are not confusing?  2 A. I think if you look at their  3 testimony, they both say that a programming  4 executive or programming professional would not  5 find these categories confusing. And I think  6 Bortz respondents were not programming  7 professionals, with perhaps an exception or  8 two. But based on the listing of the  9 respondents that I saw, those people would not  10 be likely to understand that.  11 Q. We will come back to that in just a  12 minute. But I also want to talk with you a  13 little bit more about your Direct Testimony.  14 On page 12 of Exhibit 6008, you discuss the  15 concept of sports migration. What is sports  16 migration?  17 A. Sports migration is the movement of  18 sporting events off of broadcast and onto cable  19 networks, and now even onto other types of  20 platforms including over-the-top.  21 Q. So did sports migration, does it have  22 anything to do with distant signals?  23 A. Distant signals are affected, as all  24 broadcast networks are.  25 Q. And based on your experience in the</p>	<p style="text-align: right;">4316</p> <p>1 legacy carriage is important, would you expect  2 that people answering the Bortz survey or the  3 Horowitz survey would be aware of the loss of  4 that carriage on the distantly retransmitted  5 stations for purposes of answering the survey?  6 THE WITNESS: I wouldn't necessarily  7 think that that would occur to them. That's a  8 -- that's a fairly high-level observation.  9 JUDGE STRICKLER: Too esoteric in the  10 scheme of things?  11 THE WITNESS: I think so.  12 JUDGE STRICKLER: Thank you.  13 BY MS. PLOWNICK:  14 Q. And when we talk about programming,  15 you are talking about as a cable operator you  16 would select whole signals to carry; is that  17 correct?  18 A. That's correct.  19 Q. You would not make a selection of  20 individual programs and choose to carry just a  21 program; it would be a signal?  22 THE WITNESS: I wish that were  23 possible, but technologically it is just not --  24 and commercially, it is not possible.  25 JUDGE STRICKLER: You wish it was</p>

4317	4319
<p>1 possible to pick the programs a la carte from 2 the distant signal, rather than -- 3 THE WITNESS: Correct. Correct. 4 JUDGE STRICKLER: And if you were to 5 do it that way, how would you prioritize which 6 programs to pick? 7 THE WITNESS: Viewership would be, I 8 think, the quintessential measurement. And 9 obviously the other factors. If I didn't have 10 to be concerned with bundling or legacy, I 11 think the other variable would be cost. 12 JUDGE STRICKLER: How about the 13 existence of niche programming that might 14 induce subscribership? Would that be important 15 to you? 16 THE WITNESS: I would certainly 17 consider it. 18 JUDGE STRICKLER: How important would 19 it be? 20 THE WITNESS: It's really 21 viewership-based, because the revenue that 22 comes from advertising is largely based on the 23 metric of how many people are watching. 24 JUDGE STRICKLER: So in this 25 alternative hypothetical universe we are</p>	<p>1 business. 2 JUDGE STRICKLER: Thank you. 3 BY MS. PLOVNICK: 4 Q. On pages 13 to 15 of your Direct 5 Testimony, Exhibit 6008, you describe how CSOs 6 would value distant signal programming in your 7 view in an unregulated market without the 8 statutory license in place. So based on your 9 experience in the cable industry, can you 10 explain to the Judges how you think CSOs would 11 go about acquiring distant signals if the 12 statutory license no longer existed? 13 A. I believe that they would negotiate 14 with the licensees of the broadcast channels 15 themselves, who would have compiled the 16 programming to exhibit a linear channel. 17 Q. So cable operators would still choose 18 to carry entire signals? 19 A. I think, given today's technology, 20 they don't have much choice. They don't have 21 the ability to broadcast individual channels to 22 multiple locations. 23 Q. Why do you think CSOs operating in an 24 unregulated market would negotiate distant 25 signals with broadcast and not Copyright Owners</p>
4318	4320
<p>1 talking about where you would select a la 2 carte, the stations you're assuming the 3 capacity to sell advertising time? 4 THE WITNESS: That would certainly be 5 a factor. I would weigh matters differently if 6 there were no advertising available. 7 JUDGE STRICKLER: What if there was no 8 advertising available? How would you weigh it 9 differently? 10 THE WITNESS: I guess cost would be a 11 greater factor. 12 JUDGE STRICKLER: How about the niche 13 nature of the programming? Would that become 14 more important, less important, or no 15 difference if you had no advertising? 16 THE WITNESS: I think we would need to 17 adjust for capacity issues. If I had infinite 18 ability to add as much programming as I wanted, 19 of course I would love to satisfy every niche. 20 But in a world of limited bandwidth and limited 21 capacity, I would have to make choices based on 22 predictable viewership to satisfy the most 23 people and attract and retain the most 24 subscribers to continue to pay their 25 subscriptions so that I could have a profitable</p>	<p>1 directly? 2 A. Efficiency and limitations of 3 technology. 4 Q. So where would the Copyright Owners 5 have their transaction in the hypothetical 6 market? Or would that be done before you as a 7 CSO would have your negotiation with the 8 broadcaster? 9 A. The Copyright holders of the -- 10 Q. Of the content. 11 A. Of the content? I assume they would 12 be compensated by the broadcast network, by the 13 network. 14 Q. Ms. Hamilton, I want to turn your 15 attention to your Rebuttal Testimony, which is 16 Exhibit 6009. What were you asked to do in 17 your Rebuttal Testimony? 18 A. I was asked to review the Direct 19 Testimony of Alan Singer and Dan Hartman, and 20 to review the most recent iteration of the 21 Bortz survey. 22 Q. Let's turn to page 4 of Exhibit 6009. 23 Is that where you began talking about the Bortz 24 survey? 25 A. Yes.</p>

<p style="text-align: right;">4321</p> <p>1      Q.    And for the record, do you know which 2 party in this case is sponsoring the Bortz 3 survey? 4      A.    The Joint Sports Claimants. 5      Q.    Now, you had some criticisms of the 6 Bortz survey. Can you please explain what 7 those are? 8      A.    I think that they have the wrong 9 respondents. I think that the way that they 10 asked the operators to assign value is just 11 inconsistent with the way that a decision-maker 12 would actually make that decision. I think it 13 is so confusing as to invite overvaluing of the 14 sports programming. 15      Q.    So did you make a demonstrative slide 16 to help summarize these criticisms? 17      A.    Yes. 18      MS. PLOVNICK: Albina, could you show 19 us, please, Slide Number2. 20 BY MS. PLOVNICK: 21      Q.    And is this -- is this the slide that 22 you were just speaking about? 23      A.    Yes. 24      Q.    All right. So I want to talk about 25 these different factors that you've got here.</p>	<p style="text-align: right;">4323</p> <p>1 of the Bortz respondents each year had 2 marketing-related titles? 3      A.    Close to half, as I recall, in some 4 years -- most years. 5      Q.    In your opinion would a marketing 6 professional be in a position to answer the 7 valuation questions presented by the Bortz 8 survey? 9      A.    Not in my experience, no. 10      Q.    Why not? 11      A.    They have a very different set of 12 responsibilities. They were there to market 13 the cable services and telephone and Internet 14 services to consumers and they would not have 15 had any influence over what programming would 16 be included in a video lineup. 17      Q.    Would marketing professionals have had 18 a programming budget? 19      A.    No. 20      Q.    Would marketing professionals have had 21 a marketing budget? 22      A.    Yes. 23      Q.    All right. So let's turn to your 24 second category of criticism. 25      JUDGE STRICKLER: Before you do, just</p>
<p style="text-align: right;">4322</p> <p>1 The first one is "Bortz surveyed the wrong 2 respondents." Why do you say that? 3      A.    I think I -- as I mentioned a moment 4 ago, by calling people in cable systems, which 5 are people operating locally the actual cable 6 plant at the head end that sends the signals 7 out to customers, those are not people who 8 really have the ultimate authority, certainly, 9 over what content is chosen. But in many 10 cases, I think, really have no -- no 11 understanding of what the dynamic is for even 12 choosing the programming. 13      Q.    Let's take a look at pages 5 to 6 of 14 your Rebuttal Testimony, which is Exhibit 6009. 15 All right. 16      MS. PLOVNICK: Go back one page, 17 Albina, to page 5. 18 BY MS. PLOVNICK: 19      Q.    So you see a chart there on page 5; 20 correct? 21      A.    Yes. 22      Q.    And is that chart taken from the Bortz 23 report? 24      A.    Yes, it is. 25      Q.    And so looking at this chart, how many</p>	<p style="text-align: right;">4324</p> <p>1 sticking with that one. You have a table, the 2 table is right up there on the screen. One of 3 the categories of job titles, about one, two, 4 three, four, five down is vice 5 president/director/manager of programming. Do 6 you see that? 7      THE WITNESS: Yes, I do. 8      JUDGE STRICKLER: In your experience, 9 was it typical for someone to have one of those 10 titles at a CSO? 11      THE WITNESS: No, not typical. 12      JUDGE STRICKLER: So who would 13 handle -- what would be the title, I should 14 say, of the person who was responsible for 15 making programming decisions? 16      THE WITNESS: The programming 17 decisions are not made at the local level. 18      JUDGE STRICKLER: So none of these job 19 titles would be particularly germane, given 20 that this is the wrong level? Is that what you 21 are saying? 22      THE WITNESS: That's correct. 23      JUDGE STRICKLER: It would be made at 24 a higher-up management level? 25      THE WITNESS: Yes.</p>

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1 JUDGE STRICKLER: What management  
2 level is that?

3 THE WITNESS: That is a centralized  
4 corporate level; the programming group in the  
5 parent.

6 JUDGE STRICKLER: Would that be an  
7 MSO?

8 THE WITNESS: Yes.

9 JUDGE STRICKLER: What would the title  
10 be of that person?

11 THE WITNESS: Executive vice president  
12 of programming, in my case.

13 JUDGE STRICKLER: Thank you.

14 BY MS. PLOVNICK:

15 Q. Now I'm going to move on to your next  
16 criticism that, "The Bortz valuation question  
17 is inconsistent with how CSOs make programming  
18 decisions." What do you mean by the second  
19 criticism?

20 A. I think this sort of forced sum  
21 approach is just -- it's a very artificial  
22 construct. I think the idea that you can go  
23 out and cherry-pick programming and assign  
24 arbitrary values is not all that useful,  
25 frankly, in terms of choosing -- choosing what

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1 programming value is.

2 I mean, if I'm an individual, I have  
3 my own personal preferences and I can tell you  
4 what I think is the best programming out there,  
5 the most valuable, and it may not resemble  
6 viewing behavior at all. I may even be trying  
7 to use my best instincts to guess what people  
8 might want to watch and put a value onto  
9 programming using that. But it's all fairly --  
10 extremely subjective.

11 Q. When you say inconsistent with how  
12 CSOs make programming decisions, does that have  
13 to do at all with the importation of the whole  
14 signal versus category?

15 A. Clearly, we could only transmit linear  
16 signals, not individual programming.

17 JUDGE STRICKLER: Given your reliance,  
18 as you say in your testimony, on viewing, was  
19 it your regular practice to obtain Nielsen  
20 viewing data for distantly retransmitted  
21 stations?

22 THE WITNESS: I can't say that I got  
23 Nielsens for distant signals, no.

24 JUDGE STRICKLER: How did you know if  
25 the shows were being viewed?

1 THE WITNESS: That was really the  
2 force of inertia more than anything else. Once  
3 a signal was on, it stayed on. And we did not  
4 add a lot of signals. They just were already  
5 in place and, typically, we just didn't take  
6 them off.

7 But it was -- it was rare to add a  
8 signal. I was lobbied to add signals. And in  
9 the case of a general manager coming to me and  
10 asking for it, we would -- we would consider  
11 that and we would add it.

12 JUDGE STRICKLER: While I have your  
13 attention, going back to my previous question  
14 and you said that the decision about  
15 programming would be made at the MSO level,  
16 rather than the CSO level. Does that mean that  
17 if someone was answering this survey was  
18 appropriate to the task at this higher  
19 corporate level, they would have to answer on  
20 behalf of a number of systems rather than just  
21 one system?

22 THE WITNESS: Yes.

23 JUDGE STRICKLER: And you think they  
24 would be equipped to be able to do that,  
25 because they were the ones who are making the

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1 decisions as they applied to all the, if you  
2 will, subsidiary cable systems?

3 THE WITNESS: Yes, if I understand  
4 your question correctly, they would be  
5 answering globally.

6 JUDGE STRICKLER: Thank you.

7 BY MS. PLOVNICK:

8 Q. Now, your third category of criticism  
9 with regard to potential overvaluing of JSC  
10 programming, your third point on the  
11 demonstrative, can you explain why you think  
12 this is an issue?

13 A. Well, in reviewing the way the  
14 questions were being asked, or the construct of  
15 assigning a value to different categories, I  
16 think it's very confusing to a layperson  
17 effectively who is answering this question who  
18 isn't a programming professional, to understand  
19 where non-live team sports would go. Non-live  
20 non-team sports.

21 Q. So why would not being able to know  
22 where non-team sports goes, why would that be  
23 important?

24 A. Because I think that the knee-jerk  
25 tendency is to say sports are sports. And I

<p style="text-align: right;">4329</p> <p>1 think sports are important. I'm a sports fan  2 myself, therefore, I'm going to assign a value  3 because we all know that sports are the only  4 thing that matters these days as live  5 programming.  6 And I think that it is -- it's just --  7 there is no bucket for anything other than the  8 JSC category. But I think that the tendency  9 would be to just put it all into that same  10 category.  11 Q. So in your opinion, Bortz respondents  12 would have included non-team sports in their  13 valuations for the live team sports category?  14 A. I think without having actual language  15 in front of them to study, absolutely.  16 Q. So program volume information, I think  17 in your testimony you mentioned that as a  18 factor -- in your written testimony. Would  19 this have had an impact at all on the valuation  20 of the categories in the Bortz survey?  21 A. I think that would be an extremely  22 important factor.  23 Q. And now let's just talk about a CSO's  24 budget for sports programming. What percentage  25 of a CSO's programming budget would, in your</p>	<p style="text-align: right;">4331</p> <p>1 distantly retransmitted station versus the same  2 rerun on a local station when answering the  3 survey?  4 THE WITNESS: I don't think they  5 would, no.  6 JUDGE STRICKLER: So their valuation  7 -- well, okay, thank you.  8 BY MS. PLOVNICK:  9 Q. So I was going to ask -- you said 35  10 to 40 percent of your budget was all sports  11 programming, including cable networks?  12 A. I think 35 percent, but I think  13 40 percent is fair.  14 Q. What amount of that budget would be  15 devoted to sports programming on distant  16 signals?  17 A. A very tiny, tiny percentage.  18 Q. So in your opinion, all of the  19 different criticisms that we have been talking  20 about, do you think they affect the reliability  21 of the Bortz survey?  22 A. Yes, I do.  23 Q. Did you also review the Horowitz  24 survey in connection with preparing your  25 Rebuttal Testimony?</p>
<p style="text-align: right;">4330</p> <p>1 experience, typically be devoted to the  2 acquisition of sports programming across the  3 board, all sports programming?  4 A. I think that in my testimony I say  5 35 percent. I think 35 percent at a minimum.  6 Q. So and that would include sports on  7 cable networks like ESPN and regional sports  8 networks?  9 A. That's correct.  10 JUDGE STRICKLER: I have a question  11 for you. I understand your comment about the  12 confusion someone might have with regard to  13 where to place certain types of sports, given  14 these definitions. With regard to the category  15 of Program Suppliers, which includes syndicated  16 programming? And syndicated programming -- and  17 correct me if I am wrong -- includes,  18 typically, reruns of popular television shows  19 that had aired originally on network stations.  20 Seinfeld, that type of show. Friends, that  21 type of show.  22 Do you have an opinion as to whether  23 or not people who would respond to the survey  24 would be able to distinguish the value of a  25 Seinfeld or a Friends, or what have you, on a</p>	<p style="text-align: right;">4332</p> <p>1 A. Yes.  2 Q. Do you know what party in this  3 proceeding is sponsoring the Horowitz survey?  4 A. The Program Suppliers.  5 Q. What did you think of the Horowitz  6 survey?  7 A. I thought it was an improvement over  8 the Bortz survey.  9 Q. And why did you think it was an  10 improvement?  11 A. I think they attempted to give more  12 information to -- first of all, I think it  13 appears that they chose better, more reliable  14 respondents, having given acknowledgment of  15 consolidation and the tendency of the decisions  16 to be made at a higher level. And it appeared  17 to me -- well, it was difficult to tell based  18 on the listing, but it appeared to me that they  19 were focusing more on the corporate level  20 respondent.  21 They also gave examples of the  22 programming and they created a category for  23 non-team sports, which I think broke out the  24 Program Suppliers Sports in a more accurate  25 way.</p>

<p style="text-align: right;">4333</p> <p>1        Q.    Based on your experience in the</p> <p>2        industry, do you think the Horowitz survey or</p> <p>3        the Bortz survey provides a better indication</p> <p>4        of how CSOs value the different program</p> <p>5        categories at issue in this proceeding?</p> <p>6        A.    I think the Horowitz survey is a</p> <p>7        better survey.</p> <p>8        Q.    Now I want to turn to -- Program</p> <p>9        Suppliers also asked you to review the direct</p> <p>10        testimonies of JSC witnesses Alan Singer and</p> <p>11        Daniel Hartman in connection with your Rebuttal</p> <p>12        Testimony. Did you review those testimonies?</p> <p>13        A.    Yes.</p> <p>14        JUDGE STRICKLER: Just before you do</p> <p>15        that, Counsel asked you a moment ago which was</p> <p>16        more accurate in your opinion, the Horowitz</p> <p>17        survey or the Bortz survey, and your response</p> <p>18        was the Horowitz survey was better than the</p> <p>19        Bortz survey. Do you think it was accurate in</p> <p>20        any way?</p> <p>21        THE WITNESS: I think it is more</p> <p>22        accurate, yes.</p> <p>23        JUDGE STRICKLER: Does it measure</p> <p>24        viewing in any way?</p> <p>25        THE WITNESS: It does not measure</p>	<p style="text-align: right;">4335</p> <p>1        behavior over opinion.</p> <p>2        JUDGE STRICKLER: Would you advise us</p> <p>3        to rely on the Horowitz survey at all in our</p> <p>4        measurement of value in this proceeding?</p> <p>5        THE WITNESS: Again, I think it's</p> <p>6        informative. I don't know if relying on it</p> <p>7        would be my preference, no.</p> <p>8        JUDGE STRICKLER: So you would advise</p> <p>9        us to inform ourselves --</p> <p>10        THE WITNESS: Yes.</p> <p>11        JUDGE STRICKLER: -- of value by .</p> <p>12        consideration of the Horowitz survey?</p> <p>13        THE WITNESS: Yes.</p> <p>14        JUDGE STRICKLER: But not the Bortz</p> <p>15        survey?</p> <p>16        THE WITNESS: Yes, I think that's</p> <p>17        accurate. I question the validity because of</p> <p>18        the quality of the respondents.</p> <p>19        JUDGE STRICKLER: Thank you.</p> <p>20        BY MS. PLOVNIK:</p> <p>21        Q.    Now, returning to Singer and Hartman,</p> <p>22        do you know Mr. Singer and Mr. Hartman?</p> <p>23        A.    Yes, I know both of them.</p> <p>24        Q.    How do you know them?</p> <p>25        A.    I worked with and on the other side of</p>
<p style="text-align: right;">4334</p> <p>1        viewing in any way.</p> <p>2        JUDGE STRICKLER: So you think that a</p> <p>3        survey that doesn't measure viewing in any way</p> <p>4        at all can still be somewhat accurate?</p> <p>5        THE WITNESS: I think it can be</p> <p>6        informative.</p> <p>7        JUDGE STRICKLER: Is it informative of</p> <p>8        value in this proceeding, in your opinion?</p> <p>9        THE WITNESS: I think viewership is</p> <p>10        always preferable -- the actual behavior is</p> <p>11        preferable to subjective opinion.</p> <p>12        JUDGE STRICKLER: I understand your</p> <p>13        ranking of what you think is better evidence,</p> <p>14        but do you think that the Horowitz survey is</p> <p>15        evidence of value in this proceeding?</p> <p>16        THE WITNESS: It is directionally</p> <p>17        useful.</p> <p>18        JUDGE STRICKLER: What do you mean by</p> <p>19        "directionally useful" in this context?</p> <p>20        THE WITNESS: I think that it is -- I</p> <p>21        think it's helpful to see the relative value</p> <p>22        assigned by individuals. I don't know if these</p> <p>23        respondents would have more or any ability to</p> <p>24        place value in a way that is more useful than</p> <p>25        actual viewership. I would also prefer to use</p>	<p style="text-align: right;">4336</p> <p>1        the table from each of them over the last -- in</p> <p>2        the case of Alan Singer, 20 years, and in the</p> <p>3        case of Dan Hartman, somewhere between 10 and</p> <p>4        15.</p> <p>5        Q.    Did you agree with Mr. Singer and</p> <p>6        Mr. Hartman's testimony regarding the value of</p> <p>7        distant sports programming to cable system</p> <p>8        operator?</p> <p>9        A.    No, I didn't.</p> <p>10        Q.    Why not?</p> <p>11        A.    In looking at their testimony, I think</p> <p>12        each of them just, speaking to the value of</p> <p>13        sports programming writ large generally, is</p> <p>14        talking about how live sporting events are so</p> <p>15        important. And I don't think that they are</p> <p>16        actually recognizing both the limited volume</p> <p>17        and the, almost by definition, lower quality of</p> <p>18        the live college and pro sports that are</p> <p>19        available on distant signals. By definition,</p> <p>20        those are out-of-market games that haven't been</p> <p>21        picked up by cable.</p> <p>22        Q.    Program Suppliers also asked you to</p> <p>23        review the Direct Testimony of Dr. Gregory</p> <p>24        Crawford. Did you review that testimony?</p> <p>25        A.    Yes, I did.</p>



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1 Q. And to your knowledge, does  
2 Dr. Crawford have experience working as a cable  
3 operator?

4 A. I don't believe he does.

5 Q. So did you review the section of  
6 Dr. Crawford's testimony that addresses his  
7 non-duplicate minute analysis?

8 A. Yes, I did.

9 Q. Do you believe that Dr. Crawford  
10 relies on any assumptions in that analysis?

11 A. I think he says that he just assumes  
12 that any duplicated programming would have the  
13 value of zero to a cable operator.

14 Q. So Ms. Hamilton, do you agree with  
15 Dr. Crawford's assumption?

16 A. I disagree with it.

17 Q. Why?

18 A. I think all content has value greater  
19 than zero, whether it is duplicated or not. I  
20 think that whether it is on two different  
21 channels simultaneously or whether it is time  
22 shifted and available one time and subsequently  
23 available, in any case it has some value.

24 You could have two different people in  
25 a household watching two different channels at

1 consultant in the media industry; correct?

2 A. Yes.

3 Q. Subsequent to leaving Charter in 2007,  
4 did you act as an employee of any cable system  
5 operator?

6 A. I don't believe so, no.

7 Q. Which cable system or multiple system  
8 operators did you advise following 2007?

9 A. Some I am not at liberty to disclose.  
10 So Dish Network is certainly one that I've  
11 already mentioned.

12 Q. A satellite carrier?

13 A. Yes.

14 Q. Are you familiar with Desser Sports  
15 Media?

16 A. Yes.

17 Q. Can you describe what Desser Sports  
18 Media is?

19 A. Desser Sports Media is a sports  
20 focused consultancy. Ed Desser is the  
21 principal and founder of that.

22 Q. Are you affiliated with Desser Media  
23 in any way?

24 A. I've certainly worked with Ed Desser,  
25 yes.

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1 the same time. If it is simultaneously  
2 transmitted, if it is time shifted and a viewer  
3 sees it on one channel but missed the beginning  
4 and wants to start over and sees that it is  
5 available later, of course it has value.

6 Q. Thank you, Ms. Hamilton. I have no  
7 further questions on direct.

8 JUDGE BARNETT: This is an opportunity  
9 for a morning recess. 15 minutes.

10 (A recess was taken at 10:29 a.m.,  
11 after which the trial resumed at 10:49 a.m.)

12 JUDGE BARNETT: Mr. Garrett.

13 MR. GARRETT: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. GARRETT:

16 Q. Ms. Hamilton, I am Bob Garrett, and I  
17 represent the Joint Sports Claimants in this  
18 proceeding. Good morning.

19 A. How do you do?

20 Q. You began with Charter in 2003; is  
21 that right?

22 A. Yes, that's correct.

23 Q. And you left in early 2007; correct?

24 A. Yes.

25 Q. And following that time, you became a

1 Q. Are you aware that your bio is on  
2 their website?

3 A. I wasn't aware of that, but it doesn't  
4 shock me.

5 Q. Have you advised any sports teams or  
6 leagues since leaving Charter in 2007?

7 A. Yes, I have.

8 Q. Which ones have you advised?

9 A. Again, I'm not able to disclose -- I'm  
10 not sure if I'm able to disclose any of them,  
11 to be honest. I would need to look at my  
12 consulting agreements with each of them. It is  
13 not uncommon for them to prefer that I remain  
14 on the sidelines, as it were.

15 JUDGE STRICKLER: Can you mention --  
16 can you state how many you represented during  
17 that time period?

18 THE WITNESS: Five or six, I guess.

19 JUDGE STRICKLER: And these are  
20 professional sports leagues or --

21 THE WITNESS: Teams. And one league.

22 JUDGE STRICKLER: Teams and leagues.  
23 Thank you.

24 BY MR. GARRETT:

25 Q. You mentioned Ed Desser a moment ago;

<p style="text-align: right;">4341</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Who is Ed Desser?</p> <p>4 A. Ed Desser is someone who I met during</p> <p>5 his time at NBA Network -- or at the NBA. He</p> <p>6 was one of the founders of NBA Network, and he</p> <p>7 was negotiating for carriage on Charter.</p> <p>8 Q. Were you aware that Mr. Desser was a</p> <p>9 witness for the Joint Sports Claimants in the</p> <p>10 2004-'05 decision?</p> <p>11 A. I believe he mentioned that, yes.</p> <p>12 Q. Did you consult with Mr. Desser?</p> <p>13 A. I didn't work on that. I had no -- no</p> <p>14 association with that whatsoever.</p> <p>15 Q. Did you review his testimony in the</p> <p>16 2004-'05 proceeding?</p> <p>17 A. I did not.</p> <p>18 MR. GARRETT: Geoff, I'm going to ask</p> <p>19 you to call up Exhibit 1059.</p> <p>20 BY MR. GARRETT:</p> <p>21 Q. Ms. Hamilton, this is the written</p> <p>22 Rebuttal Testimony of Mr. Desser in the</p> <p>23 2004-'05 proceeding. And I'd ask you to turn</p> <p>24 -- it should be in your binder as the first</p> <p>25 tab.</p>	<p style="text-align: right;">4343</p> <p>1 differentiation, driving distribution, and the</p> <p>2 need to differentiate a characteristic sports</p> <p>3 program, among others. Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Are those terms with which you are</p> <p>6 familiar?</p> <p>7 A. Certainly I understand them, yes.</p> <p>8 Q. And do you use those in advising your</p> <p>9 sports clients concerning the value of their</p> <p>10 programming?</p> <p>11 A. I don't know that I've ever used them.</p> <p>12 Q. He concludes this paragraph by saying,</p> <p>13 "This is why sports are often a loss leader for</p> <p>14 a network." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Are you familiar with the term loss</p> <p>17 leader for a network?</p> <p>18 A. Yes.</p> <p>19 Q. Can you explain what a loss leader is?</p> <p>20 A. Something that costs more than the</p> <p>21 value that it actually recovers or generates.</p> <p>22 Q. All right. So I'll use as an example,</p> <p>23 you are aware that Fox and the NFL recently</p> <p>24 entered into a deal covering Thursday Night</p> <p>25 Football; correct?</p>
<p style="text-align: right;">4342</p> <p>1 A. Volume I, or -- is it Volume II, Part</p> <p>2 1, Part 2?</p> <p>3 Q. This is Volume II, Part 1.</p> <p>4 A. Okay.</p> <p>5 Q. But there is no Part 2.</p> <p>6 A. Okay. Got it.</p> <p>7 Q. We do this just to confuse the</p> <p>8 witnesses.</p> <p>9 A. You've succeeded.</p> <p>10 Q. All right. Go to page 4, paragraph 8,</p> <p>11 please.</p> <p>12 A. Yes.</p> <p>13 Q. I'll represent that Dr. Desser</p> <p>14 testified about the reasons why the Program</p> <p>15 Suppliers' viewing study in that proceeding as</p> <p>16 offered by Dr. Ford did not capture the value</p> <p>17 of sports programming. And if we look here at</p> <p>18 paragraph A, you see he says that, "Ford's</p> <p>19 model does not account for other types of value</p> <p>20 attributable to sports programming in my</p> <p>21 experience." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And he goes on to refer to additional</p> <p>24 elements of value include commercial value,</p> <p>25 prestige, packaging, audience flow, risk,</p>	<p style="text-align: right;">4344</p> <p>1 A. Yes.</p> <p>2 Q. And that deal covers the next</p> <p>3 five years of Thursday Night Football; correct?</p> <p>4 A. I believe so.</p> <p>5 Q. And gets them about 11 Thursday night</p> <p>6 games per year; correct?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know how much Fox paid for</p> <p>9 those rights?</p> <p>10 A. Several billion.</p> <p>11 MR. GARRETT: Geoff, could you just</p> <p>12 put up on the screen the Wall Street Journal</p> <p>13 article.</p> <p>14 BY MR. GARRETT:</p> <p>15 Q. It's not an exhibit and I'm not</p> <p>16 offering it as an exhibit, but I'd like to just</p> <p>17 go down to under "the terms of its new NFL</p> <p>18 agreement."</p> <p>19 A. I'm sorry; that font is so small --</p> <p>20 MS. PLOVNICK: You Honor, we would</p> <p>21 object to something that is not an exhibit, and</p> <p>22 has not being offered as an exhibit, being read</p> <p>23 into the record.</p> <p>24 JUDGE BARNETT: Mr. Garrett?</p> <p>25 MR. GARRETT: It's impeachment. I</p>

<p style="text-align: right;">4345</p> <p>1 don't have to offer it as an exhibit to impeach 2 testimony. 3 JUDGE BARNETT: That's correct. What 4 is it that you are impeaching? 5 MR. GARRETT: Testimony about the loss 6 leaders and the NFL package. 7 MS. PLOVNICK: Your Honor -- 8 JUDGE BARNETT: I don't think she said 9 anything that about -- that would be impeached 10 with what I am looking at right now. She said 11 several billion or several million or 12 something. I'd have to check to see if it was 13 an M or a B. 14 JUDGE FEDER: B. 15 JUDGE BARNETT: Thank you. 16 JUDGE FEDER: 660 million times 17 five years is several billion dollars. 18 JUDGE BARNETT: Sustained. 19 MR. GARRETT: Okay. 20 BY MR. GARRETT: 21 Q. Ms. Hamilton, let me just ask you 22 about your testimony at page 5 to 6 of your 23 written Rebuttal Testimony. Do you have that? 24 A. Of my rebuttal? 25 Q. Yes, ma'am.</p>	<p style="text-align: right;">4347</p> <p>1 testimony, Appendix A. 2 BY MR. GARRETT: 3 Q. Did you review the survey that 4 Mr. Horowitz used? 5 A. Yes. 6 Q. We see in the introduction: If the 7 person named on the sample is not available, 8 ask to speak with a general manager, 9 programming director, or the marketing 10 director. Do you see that? 11 A. Yes. I'm sorry; this is back in the 12 actual exhibit, it's the survey itself? 13 Q. 23, of Exhibit 6012. 14 A. Is that page 23? 15 Q. Yes, ma'am. 16 A. Got it. Yes. 17 Q. So it's Mr. Horowitz's judgment that a 18 marketing director would be qualified to answer 19 the questions in his survey; correct? Or could 20 be qualified? 21 A. That appears to be the case. 22 Q. And if we go over to Tables 8-1 -- 23 beginning at Tables 8-1, 8-4, have you seen 24 this table before? 25 A. Yes.</p>
<p style="text-align: right;">4346</p> <p>1 A. Just a moment. I'm sorry; which 2 pages? 3 Q. 5 to 6. 4 A. Got it. 5 Q. You testify on these pages, as you did 6 earlier this morning, that the Bortz survey 7 reached a large number of respondents that had 8 job titles associated with marketing rather 9 than programming or senior management; correct? 10 A. That's correct. 11 Q. And that you thought was a problem 12 because marketing individuals would not have 13 knowledge of program valuations; correct? 14 A. That's one problem, yes. 15 Q. Did you review the Horowitz survey? 16 A. I did. 17 Q. And it's true, also, that the Horowitz 18 survey reached a number of respondents who had 19 marketing titles; correct? 20 A. I believe so, yes. 21 Q. Horowitz said he sought to improve 22 upon the Bortz survey; correct? 23 A. That's the testimony, yes. 24 MR. GARRETT: If we go, Geoff, to 25 Exhibit 6012, which is Mr. Horowitz's</p>	<p style="text-align: right;">4348</p> <p>1 Q. And there are, in fact, a number of 2 individual respondents who had marketing titles 3 in the Horowitz survey; correct? 4 A. Yes. 5 Q. The criticism that the Bortz survey 6 reached respondents who had marketing titles is 7 a criticism that has been leveled against prior 8 versions of the Bortz survey; correct? 9 A. I don't know. 10 Q. Do you know whether -- you offered 11 several criticisms here of the Bortz survey. 12 Do you know whether any of them has been 13 offered in prior proceedings concerning the 14 Bortz studies? 15 A. I don't know. 16 JUDGE STRICKLER: Excuse me, Counsel, 17 I just want to follow up. I think Counsel 18 referred you to page 5 of your written Direct 19 Testimony. At the top, the paragraph that 20 spills over from the previous page, page 5 -- 21 THE WITNESS: I believe he was 22 referring me to the rebuttal. 23 JUDGE STRICKLER: I'm going to refer 24 you to the direct. I apologize for getting 25 that wrong. Top of page 5, you say -- this is</p>

<p style="text-align: right;">4349</p> <p>1 consistent to what you testified a moment ago.  2 You said, quote, "Virtually all major MSOs had  3 a centralized hierarchy in place requiring  4 senior level management to approve channel  5 lineups for all cable systems within the MSO,  6 regardless of geography."  7 THE WITNESS: Right.  8 JUDGE STRICKLER: So was the senior  9 level management called upon to approve what  10 was proposed as a channel lineup by the CSO?  11 So the CSO made the first cut at it, but it  12 couldn't be finalized until the MSO at the  13 higher level made the decision?  14 THE WITNESS: There is certainly some  15 bottom-up influence or request. Usually, it  16 wouldn't necessarily be at the system level.  17 JUDGE STRICKLER: By system level, you  18 mean CSO; right?  19 THE WITNESS: Well, CSO is not a term  20 that I'm familiar with until coming to this  21 proceeding, to be honest with you. The  22 systems -- there are hundreds of systems, for  23 example, at Charter. And they all feed up into  24 a sort of regional management level. And those  25 four or five regions, however, many they have</p>	<p style="text-align: right;">4351</p> <p>1 was rare to -- in my experience, to have a  2 request to add a distant signal. So it  3 certainly would have been something that a  4 local system might have requested, but it just  5 didn't happen --  6 JUDGE STRICKLER: Thank you.  7 THE WITNESS: -- very often.  8 BY MR. GARRETT:  9 Q. Just to follow up on that, could you  10 go to 1150?  11 A. I'm sorry, 1150 in your binder?  12 Q. Yes, ma'am.  13 A. Okay. Got it.  14 Q. Do you recognize this document,  15 Ms. Hamilton?  16 A. I do not recognize this document.  17 Q. Do you have familiarity with the  18 Statement of Account forms in your position at  19 Charter or your subsequent consulting  20 assignments?  21 A. No.  22 Q. Well, I will just represent to you  23 that this is a Statement of Account that was  24 filed for the period January 1st through  25 June 30, 2010, by the Charter system that</p>
<p style="text-align: right;">4350</p> <p>1 these days, then report into a corporate  2 programming group.  3 JUDGE STRICKLER: And that's the MSO  4 to which you are referring?  5 THE WITNESS: Yes.  6 JUDGE STRICKLER: So would the MSO  7 ever, at its highest level, ever initiate the  8 channel lineup decision or would they wait for  9 it to sort of percolate up from the bottom?  10 THE WITNESS: It would go -- it could  11 go either direction. It could be top down. If  12 I need to fill a subscriber commitment that I  13 have to a network or set of networks, I may  14 require that that network be launched on given  15 systems.  16 JUDGE STRICKLER: How about with  17 regard to distantly retransmitted stations?  18 Would that percolate up from the lower level to  19 be approved by the MSO at the highest level, or  20 would that also be a decision that was made at  21 the highest level?  22 THE WITNESS: Certainly, there just  23 wasn't very much active decision-making about  24 distant signals. There just tended to be this  25 perpetuation of what was already carried. It</p>	<p style="text-align: right;">4352</p> <p>1 served -- if you go to the second page of this  2 -- Scottsbluff, Nebraska. So are you familiar  3 with the cable system Charter system in  4 Scottsbluff, Nebraska?  5 A. Not personally, no. Though I'm  6 certain it was probably a cable system when I  7 was head of programming.  8 Q. Okay. Let me just go to page 3, page  9 G?  10 MS. PLOVNICK: Your Honor, we would  11 object to this, because this exhibit is not yet  12 in evidence and the witness has said she is not  13 familiar with it. And it was actually dated  14 after she was no longer working at Charter. So  15 we would object to it being read into the  16 record without it being admitted and we would  17 object to its admission.  18 JUDGE BARNETT: Mr. Garrett?  19 MR. GARRETT: I'm using it for  20 illustrative purposes. There have been  21 questions here about exactly how the process  22 works with respect to distant signals. This is  23 a Statement of Account. It has specific  24 distant signals with a specific Charter system  25 which she said she thought had existed when she</p>

<p style="text-align: right;">4353</p> <p>1 was there at Charter. And I am simply trying  2 to use the Statement of Account to establish  3 the facts of carriage. And then the next line  4 of questioning would be about the  5 decision-making process concerning those  6 distant signals.  7 JUDGE BARNETT: Has it been marked?  8 MR. GARRETT: It had been marked. It  9 has been filed. We have not yet moved it into  10 admission.  11 JUDGE BARNETT: Before we get  12 testimony about the contents of this document,  13 it probably should be offered into evidence.  14 MR. GARRETT: Well, then, I would  15 offer it into evidence as a publicly filed  16 Statement of Account of a Charter system, and  17 she worked for Charter.  18 MS. PLOVNICK: We would object that it  19 has no sponsoring witness and Ms. Hamilton has  20 not been able to authenticate the document and  21 it covers a period of time that she did not  22 work at Charter.  23 JUDGE BARNETT: We can take official  24 notice of this as a document that's filed with  25 the Copyright Office. What -- the number is?</p>	<p style="text-align: right;">4355</p> <p>1 are. I've never seen a form like this in my  2 life.  3 Q. Were you familiar with this particular  4 system when you were a programming director at  5 Charter?  6 A. Not specifically.  7 Q. If I represent to you that this  8 particular system carried several different  9 distant signals, can you tell me what, if any,  10 role you had in choosing those signals?  11 A. I wouldn't be able to tell you. This  12 was 2010. I would have been gone since  13 beginning of 2007.  14 Q. Assume that they had the same channel  15 lineup in 2005, would you have played any role  16 in choosing the signals for this particular  17 system?  18 A. I may have signed off on an approval  19 at the corporate level. I got voluminous  20 printouts of channel changes that were vetted  21 by people who were on my staff.  22 Q. And those approval requests would have  23 originated where?  24 A. Could have been at the regional level;  25 could have been at our system level. It could</p>
<p style="text-align: right;">4354</p> <p>1 MR. GARRETT: 1150, your Honor.  2 JUDGE BARNETT: 1150 is admitted.  3 (Exhibit Number 1150 was marked and  4 received into evidence.)  5 BY MR. GARRETT:  6 Q. So we are on page 3 of 1150,  7 Ms. Hamilton. Do you see that?  8 A. Yes. Page 3 as listed on top or the  9 third page of the exhibit?  10 Q. At the top of page 3, it's space G.  11 A. Okay.  12 Q. And just go to the next page, too. So  13 this is a system that had two different channel  14 lineups. On the next page, the topmost screen  15 channel lineup B and we go back to channel  16 lineup A on the preceding page. Do you see  17 that? So incidentally, this particular system  18 did not carry WGN, did it?  19 A. I don't know.  20 Q. If all of the signals that were  21 broadcast signals that were retransmitted  22 during this particular accounting period are  23 required to be listed here in space G, we don't  24 see any listing of WGN, do we?  25 A. I have no idea what these listings</p>	<p style="text-align: right;">4356</p> <p>1 have -- I really couldn't say. I have no idea.  2 Q. All right. There is a reference here  3 to KWGN. Are you familiar with that signal?  4 A. No.  5 Q. From Denver, Colorado?  6 A. Yes, I understand.  7 Q. Do you recognize that it was a Tribune  8 station?  9 A. Not off the top of my head, but it  10 certainly would stand to reason.  11 Q. So is it fair to say that you would  12 not really be able to tell me much of anything  13 about any of these distant signals on this  14 Scottsbluff, Nebraska?  15 A. That's correct.  16 Q. And individuals who would have  17 personal knowledge of the reasons why the  18 system was carrying particular distant signals,  19 where would I find them?  20 MS. PLOVNICK: Objection. This is not  21 even the time period Ms. Hamilton was working  22 at Charter. It calls for speculation.  23 BY MR. GARRETT:  24 Q. Well, assume that it was the 2004  25 through 2007, when you actually worked at</p>

<p style="text-align: right;">4357</p> <p>1 Charter. Okay?</p> <p>2 JUDGE BARNETT: And the question is?</p> <p>3 BY MR. GARRETT:</p> <p>4 Q. Who at Charter would be most familiar</p> <p>5 with the programming carriage decisions</p> <p>6 involving carriage of these particular distant</p> <p>7 signals?</p> <p>8 MS. PLOWNICK: Your Honor, this is a</p> <p>9 2010 Statement of Account. It is not from 2004</p> <p>10 to 2007. So we have no idea who made decisions</p> <p>11 about distant signal carriage.</p> <p>12 JUDGE BARNETT: Sustained. Rephrase</p> <p>13 the question, Mr. Garrett. She hasn't verified</p> <p>14 that she is familiar with this or that any of</p> <p>15 these signals were carried during the time she</p> <p>16 was employed.</p> <p>17 BY MR. GARRETT:</p> <p>18 Q. Let me ask you a hypothetical,</p> <p>19 Ms. Hamilton. Assume that in 2005, when you</p> <p>20 were at Charter, the system in Scottsbluff,</p> <p>21 Nebraska, carried five different distant</p> <p>22 signals -- seven distant signals. Okay? If I</p> <p>23 wanted to know why the system was carrying</p> <p>24 those signals, who would I go to at Charter to</p> <p>25 ask?</p>	<p style="text-align: right;">4359</p> <p>1 A. Yes.</p> <p>2 Q. Have you done any analysis to</p> <p>3 determine how much of these other sports were</p> <p>4 actually on distant signal on a non-network</p> <p>5 basis from the 2010 to 2013?</p> <p>6 A. No.</p> <p>7 Q. Can you name any distant signals</p> <p>8 carried by cable operators in 2010 to 2013 that</p> <p>9 carried golf on a non-network basis?</p> <p>10 A. I can't. I haven't done the analysis.</p> <p>11 Q. Okay. You also talked about the small</p> <p>12 value of sports programming on distant signals.</p> <p>13 Do you recall that?</p> <p>14 A. Yes.</p> <p>15 Q. Again, have you done any analysis to</p> <p>16 determine how much sports programming was on</p> <p>17 distant signals in 2010 through 2013?</p> <p>18 A. Not personally.</p> <p>19 Q. And you relied upon Dr. Gray for the</p> <p>20 numbers that you put in your testimony?</p> <p>21 A. That's correct.</p> <p>22 Q. Have you seen the criticisms that have</p> <p>23 been leveled against those particular numbers?</p> <p>24 A. I don't know that I have.</p> <p>25 Q. Do you know how those numbers were</p>
<p style="text-align: right;">4358</p> <p>1 A. Why they were carried?</p> <p>2 Q. Yes.</p> <p>3 A. I honestly have no idea. I don't know</p> <p>4 that that is a question that would typically be</p> <p>5 asked. I think that there could be a different</p> <p>6 reason for each one of the signals. And -- but</p> <p>7 I really couldn't say.</p> <p>8 Q. Well, who would have -- staying with</p> <p>9 my hypothetical, who would have the best sense</p> <p>10 of the relative values of the different types</p> <p>11 of distant signals being carried?</p> <p>12 A. I assume a subscriber or a viewer.</p> <p>13 Q. Okay. Who at Charter would have the</p> <p>14 best sense of the relative value of those</p> <p>15 signals?</p> <p>16 A. Someone who watches the channels.</p> <p>17 Q. All right. You also testified here</p> <p>18 that various Bortz respondents would not</p> <p>19 understand sports programming was limited only</p> <p>20 to live sports; do you recall that?</p> <p>21 A. Yes.</p> <p>22 Q. And that they would consider other</p> <p>23 sport activities, such as golf, tennis, NASCAR,</p> <p>24 and Olympics, as falling within sports;</p> <p>25 correct?</p>	<p style="text-align: right;">4360</p> <p>1 calculated?</p> <p>2 A. No.</p> <p>3 MR. GARRETT: Let me ask you to put</p> <p>4 up, Geoff, the Israel written Rebuttal</p> <p>5 Testimony, Table 5.</p> <p>6 BY MR. GARRETT:</p> <p>7 Q. Did you review the Israel Rebuttal</p> <p>8 Testimony?</p> <p>9 A. No.</p> <p>10 Q. So you haven't seen these numbers here</p> <p>11 before either?</p> <p>12 A. No.</p> <p>13 Q. I'm sorry?</p> <p>14 A. I have not seen these numbers.</p> <p>15 Q. And you don't know how they relate to</p> <p>16 Dr. Gray's testimony, do you?</p> <p>17 A. I do not.</p> <p>18 Q. Assume for a moment that Table 5 shows</p> <p>19 that the amount of sports programming on</p> <p>20 distant signals was 4.5 percent in 2004-'05 and</p> <p>21 5.9 percent in 2010-'13, do you see that?</p> <p>22 A. I see that.</p> <p>23 Q. You have nothing to dispute that, do</p> <p>24 you?</p> <p>25 MS. PLOWNICK: Your Honor, I would</p>

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1 object as mischaracterization. This is  
2 weighted by the subscriber and he has not  
3 disclosed that to the witness.  
4 Mischaracterization.  
5 MR. GARRETT: It is right on the  
6 screen, your Honor, that it is weighted by  
7 subscribers.  
8 JUDGE BARNETT: Overruled.  
9 BY MR. GARRETT:  
10 Q. And also this particular exhibit shows  
11 that the Program Suppliers' share of -- I'm  
12 sorry; the volume of programming declined  
13 during that period 2004-'05 to 2010-'13, by  
14 51 percent to 33.3 percent. Do you see that?  
15 A. I see that.  
16 Q. Is it your testimony that the volume  
17 numbers referred -- the various volume numbers  
18 should be taken into account here in  
19 determining relative market value?  
20 A. It would stand to reason.  
21 Q. Would it stand to reason, then, that  
22 Program Suppliers' shares should decline  
23 commensurate with its decline in volume over  
24 this period?  
25 A. This is really not my area of

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1 expertise.  
2 Q. But you did criticize the Bortz survey  
3 for not giving information about volume;  
4 correct?  
5 A. The volume is still small, I think  
6 it's important to note. I can't speak to the  
7 relative shifts and how they're calculated and  
8 whether they should or should not be weighted  
9 by subscriber. It's not something that I am an  
10 expert in.  
11 MR. GARRETT: Geoff, let me ask you  
12 put up the written direct -- I'm sorry the  
13 Bortz report, 1001.  
14 BY MR. GARRETT:  
15 Q. And let's go to the back where we have  
16 an example of one of the WGNA surveys. You  
17 said you did review the Bortz report; correct?  
18 A. Yes, I did.  
19 Q. And in your review, did you come  
20 across what is up on the screen here, the WGNA  
21 America 2010 Programming Summary?  
22 A. I may have looked at it.  
23 Q. But you are aware that at least with  
24 respect to those respondents whose only distant  
25 signal was WGNA, that Bortz provided them in

1 advance of the survey with a summary of all the  
2 programming on WGNA; correct?  
3 A. I don't recall.  
4 Q. So when you formulated your criticism  
5 here of Bortz about not giving any indication  
6 of the volume of programming, you did not have  
7 in mind how they treated the WGNA-only  
8 respondents?  
9 A. I did not have that in mind.  
10 BY MR. GARRETT: Geoff, let me ask you  
11 to put up the Howard Homonoff testimony from  
12 the 2004-'05 proceeding. I believe it is 1146.  
13 BY MR. GARRETT:  
14 Q. Do you have that before you,  
15 Ms. Hamilton?  
16 A. 1146? I do.  
17 Q. That's the written Direct Testimony of  
18 Howard Homonoff, and you refer to that at  
19 page 3, Note 1, of your written Direct  
20 Testimony, do you not?  
21 A. Yes, I do.  
22 Q. And you reviewed Mr. Homonoff's  
23 written testimony in preparation for testifying  
24 in this proceeding?  
25 A. Yes.

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1 Q. Did you review his oral testimony,  
2 too?  
3 A. Briefly, yes -- I'm sorry, oral  
4 testimony? No, just his Direct Testimony,  
5 direct written.  
6 Q. The written Direct Testimony?  
7 A. Yes.  
8 BY MR. GARRETT: Your Honor, I will  
9 move for admission here of Exhibit 1146, the  
10 testimony of Howard Homonoff in the 2004-'05  
11 proceeding.  
12 MS. PLOVNIK: No objection.  
13 JUDGE BARNETT: 1146 is admitted.  
14 (Exhibit Number 1146 was marked and  
15 received into evidence.)  
16 MR. GARRETT: Thank you, your Honor.  
17 BY MR. GARRETT:  
18 Q. Now, if you go to page 4 in  
19 paragraph 6 -- do you have that, Ms. Hamilton?  
20 A. I believe I do.  
21 Q. Okay. And so it talks here generally  
22 about the assignment that he had in the  
23 2004-'05 proceeding. Do you see that?  
24 A. Yes.  
25 Q. "Provide an industry expert

<p style="text-align: right;">4365</p> <p>1 perspective on the process by which cable  2 operators -- sometimes referred to as multiple  3 system operators, or MSOs -- negotiate for  4 carriage of programming on cable systems, the  5 factors that influence their programming  6 carriage decisions." Do you see that?  7 A. Yes.  8 Q. And that is similar to the testimony  9 you are providing here today too; correct?  10 A. Yes.  11 Q. If we go to paragraph 7.  12 A. Yes?  13 Q. This is where he offers his general  14 opinions. Do you see that?  15 A. Yes.  16 Q. And the first one is, "The process by  17 which cable operators making their programming  18 decisions is typically driven by programming  19 executives at corporate headquarters and not at  20 the individual system level." Do you see that?  21 A. Yes, I do.  22 Q. And that is the testimony you are  23 providing here today as well; correct?  24 A. Yes.  25 Q. And then he goes on to say, "In this</p>	<p style="text-align: right;">4367</p> <p>1 marketplace for guidance, and a hypothetical  2 distant signal marketplace is consistent with  3 my experience. Do you see that?  4 A. Is that a carryover from page 5?  5 Q. Yes. "A hypothetical marketplace for  6 the acquisition of programming in distant  7 signals is closely analogous with the market  8 for whole cable networks, which represent a  9 large majority of the programming MSOs provide  10 to their subscribers." Do you see that?  11 A. I see that.  12 Q. Would you agree that the cable network  13 marketplace is closely analogous to this  14 hypothetical marketplace that you discussed in  15 your earlier testimony?  16 A. I haven't given it much thought, but I  17 don't disagree with it.  18 Q. Okay. So if we go to Figure 3 in  19 page 20, Mr. Homonoff concluded that by  20 examining the top 25 cable networks in 2004,  21 found that over 90 percent of the programming  22 in those networks would be classified as  23 Program Suppliers programming, in the meaning  24 of the definition of this proceeding. Do you  25 see that?</p>
<p style="text-align: right;">4366</p> <p>1 process, corporate programming executives  2 synthesize a number of factors that they hope  3 will attract and retain subscribers, including  4 most importantly subscriber preferences." Do  5 you see that?  6 A. Yes, I see that.  7 Q. And you agree with that?  8 A. I don't know if I agree with "most  9 importantly," but it's an important factor, if  10 that's what you're asking.  11 Q. Okay. And then Mr. Homonoff, you will  12 recall, went on to conduct a separate analysis  13 of cable networks; correct?  14 A. I don't know.  15 Q. Let's go to paragraph 8. I will give  16 you a chance to just look at that paragraph.  17 And if we go down to the last sentence --  18 A. I'm sorry; I'm still reading.  19 Q. I'm sorry. Excuse me.  20 A. Okay.  21 Q. Are you done now?  22 A. Yeah.  23 Q. Thanks. I just wanted to focus down  24 on the bottom there about the utility and  25 validity of looking to the cable network</p>	<p style="text-align: right;">4368</p> <p>1 A. Yes.  2 Q. If we -- I know you haven't done any  3 analysis, but just based on your experience  4 here in years 2010 to '13, do you expect that  5 if we focused just on the top 25 cable networks  6 that the vast majority of programming on those  7 networks would be what we would consider to be  8 Program Suppliers programming?  9 A. I would think that the majority,  10 certainly. Yes.  11 Q. And if we broadened our search to say  12 the top 50, would you say the same thing?  13 A. Yes.  14 Q. All right. Approximately how many  15 cable networks were there in the years 2010 to  16 '13?  17 A. Over 100.  18 Q. And so if we looked at all of those  19 cable networks, would you agree that  20 probably -- to use your term -- the majority of  21 programming on that was Program Suppliers  22 programming?  23 A. Yes.  24 Q. And a very small portion of it would  25 be sports programming; correct?</p>



<p style="text-align: right;">4369</p> <p>1 A. Right.</p> <p>2 Q. Okay. You've used the term "viewing"</p> <p>3 a number of times in your written testimony and</p> <p>4 again this morning.</p> <p>5 A. Yes.</p> <p>6 Q. By "viewing," are you talking about</p> <p>7 ratings or shares or Qs or something else?</p> <p>8 A. I'm not differentiating. Just greater</p> <p>9 or lesser.</p> <p>10 Q. I'm sorry; greater or lesser what?</p> <p>11 A. Viewership. More people watching.</p> <p>12 Q. You focused on the number of people</p> <p>13 who are watching; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And ratings is one of the ways to</p> <p>16 determine the percentage of households who are</p> <p>17 tuned to a particular program at any given</p> <p>18 time; correct?</p> <p>19 A. Right.</p> <p>20 Q. And you talked about your use of</p> <p>21 Nielsen ratings data; correct?</p> <p>22 A. I've certainly reviewed it, yes.</p> <p>23 Q. And data on prime time delivery as</p> <p>24 well as 24-hour delivery?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">4371</p> <p>1 certainly negotiated. But that's not something</p> <p>2 that I can just make up and bring to the table.</p> <p>3 Q. It is not necessarily a one-to-one</p> <p>4 correlation between viewership and value;</p> <p>5 correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And you understand that the Judges in</p> <p>8 the last litigated proceeding rejected or</p> <p>9 refused to give any weight to the viewing</p> <p>10 studies presented by Program Suppliers?</p> <p>11 A. I saw that.</p> <p>12 Q. And you understand that their</p> <p>13 predecessors in the proceeding before that</p> <p>14 reached the same conclusion; correct?</p> <p>15 A. I think I've seen references to it. I</p> <p>16 don't know that I've read that.</p> <p>17 Q. Now, we need to go back to what has</p> <p>18 been referred to here as ancient times to find</p> <p>19 a Phase 1 determination of the weight accorded</p> <p>20 the Program Suppliers study, so the 1990-'92</p> <p>21 proceeding; is that right? Are you aware of</p> <p>22 that?</p> <p>23 A. No, I'm not aware of it.</p> <p>24 Q. Let me just ask you to pull up the</p> <p>25 1990-'92 CARP report, and go to page 43,</p>
<p style="text-align: right;">4370</p> <p>1 Q. Have you reviewed Dr. Gray's testimony</p> <p>2 in this proceeding?</p> <p>3 A. I had reviewed it at one point, yes.</p> <p>4 Q. Do you know how he calculates viewing?</p> <p>5 A. I don't recall.</p> <p>6 Q. If we just focus on ratings for a</p> <p>7 moment, I'll give you a hypothetical. Assuming</p> <p>8 you have two cable networks. One has a 24-hour</p> <p>9 2 rating and the other one has a 24-hour 1</p> <p>10 rating. Got that?</p> <p>11 A. Yes.</p> <p>12 Q. Would you pay twice as much for the</p> <p>13 first one as you would for the second one?</p> <p>14 A. Not necessarily.</p> <p>15 Q. What factors would go into determining</p> <p>16 how much you would pay for that second one,</p> <p>17 either one of those two cable networks?</p> <p>18 A. All of the factors that I've cited.</p> <p>19 The fact that one may be already carried, and</p> <p>20 so legacy carriage. It would also be important</p> <p>21 to know whether the networks were bundled with</p> <p>22 any other networks and what the cost -- I can't</p> <p>23 necessarily determine what the cost is that I'm</p> <p>24 willing to pay. It's what is offered to me --</p> <p>25 at whatever price it's offered to me is</p>	<p style="text-align: right;">4372</p> <p>1 Tab 12.</p> <p>2 A. I'm sorry; what are we looking at?</p> <p>3 Q. We are looking right now at page 43.</p> <p>4 A. Of?</p> <p>5 Q. Exhibit 6034.</p> <p>6 JUDGE BARNETT: What is that? 6034</p> <p>7 again, please?</p> <p>8 MR. GARRETT: It is the CARP report</p> <p>9 from the 1990-'92 proceeding, which we have</p> <p>10 offered.</p> <p>11 JUDGE BARNETT: Thank you.</p> <p>12 BY MR. GARRETT:</p> <p>13 Q. So let's just go to the final</p> <p>14 paragraph, first sentence.</p> <p>15 A. Okay.</p> <p>16 Q. "Certainly, viewing is a significant</p> <p>17 factor in value."</p> <p>18 A. That's what it says.</p> <p>19 Q. And would you agree with that?</p> <p>20 A. Yes.</p> <p>21 Q. Now, go to the next page, page 44.</p> <p>22 A. Yes.</p> <p>23 Q. And we go to the third full sentence,</p> <p>24 which has been used, I think, three separate</p> <p>25 times in this proceeding. Do you see that? It</p>

<p style="text-align: right;">4373</p> <p>1 says, "It is disingenuous to say that the cable 2 system's interest is only in attracting 3 subscribers, but is totally unconcerned with 4 whether or not the subscriber, in fact, watches 5 the programming." Do you see that? 6 A. I see that. 7 Q. Do you agree with that? 8 A. I would need to read the entire 9 passage and make certain it makes sense in 10 context. This is the first time I've seen it. 11 Q. Let me ask you this. They refer here 12 to the Program Suppliers industry witness in 13 that proceeding who testified that, "Cable 14 system operators are more willing to carry the 15 more heavily watched, higher-rated services." 16 Do you see that? 17 A. Yes. 18 Q. Would you agree with that? 19 A. Yes. 20 Q. And the next one, "Cable system 21 operators receive Nielsen data in a variety of 22 ways." Do you agree with that, too? 23 A. Yes. 24 Q. Now, if we flip back to page 30 of the 25 CARP -- of that same document, you see here the</p>	<p style="text-align: right;">4375</p> <p>1 three principal matters and I am persuaded that 2 the Bortz survey is the best tool available for 3 measuring relative values in the relevant 4 marketplace and that it should receive far more 5 weight than it does." And he refers to the 6 supply side aspects which has been raised in 7 that proceeding, and then goes on. 8 One last thing. The CARP panel, in 9 the 1998-'99 proceeding, did, in fact, put more 10 weight on Bortz and points of viewing. 11 MR. GARRETT: And if we could just go 12 to the Program Suppliers v. Librarian decision, 13 Geoff. 14 MS. PLOVNICK: Your Honor, this 15 document is not in the record. I understand it 16 is a decision of the D.C. Circuit, but it has 17 been pointed out. 18 JUDGE BARNETT: Has it been marked? 19 MR. GARRETT: No, your Honor. I would 20 ask that you take official notice of it. 21 JUDGE BARNETT: Can you put the 22 citation in the record, please? 23 MR. GARRETT: Certainly, your Honor. 24 It is Program Suppliers v. Librarian, 409 Fed 25 3rd, 395. And we are going to go to page 402,</p>
<p style="text-align: right;">4374</p> <p>1 shares that Program Suppliers presented in 1990 2 to '92. They are in that box and I will just 3 represent to you that their viewing shares were 4 between 80 and 83 percent. Do you see that? 5 A. Yes. 6 Q. If we now go to page 143, these were 7 the final awards. I will represent to you that 8 the Program Suppliers got between 55 and 9 56 percent of the basic funds in those years. 10 Do you see that? 11 A. I see that. 12 Q. So that is substantially less than the 13 amount of viewing shares; correct? 14 A. That is less. 15 Q. It's about 25 to 28 percentage points 16 less than the viewing shares? 17 A. Doing the math, I think that's right. 18 Q. If we go to page 170, you will see 19 there is actually a dissent in that arbitration 20 panel. They said they would have accorded more 21 weight to Bortz. Do you see that? 22 A. Would you like me to read the whole 23 thing? 24 Q. No, I think if we just go to the 25 second paragraph. "In summary, I differ as to</p>	<p style="text-align: right;">4376</p> <p>1 the decision of the D.C. Circuit, 2005. 2 JUDGE BARNETT: Thank you. 3 BY MR. GARRETT: 4 Q. Now, do you have that in front of you? 5 A. No, I'm sorry. Where is that in my 6 notebook? 7 MR. GARRETT: May I approach the 8 witness, your Honor? 9 JUDGE BARNETT: You may. 10 MR. GARRETT: This is the decision and 11 we are going to refer to page 5, there. 12 (Indicating.) 13 THE WITNESS: Thank you. 14 MR. GARRETT: If we could go one 15 sentence above that, Geoff. 16 BY MR. GARRETT: 17 Q. You see on the right-hand side the 18 portion that has been highlighted here where 19 the D.C. Circuit said, "Nor did the CARP act 20 unreasonably in declining to rely on Nielsen 21 for direct evidence of viewing." Do you see 22 that? 23 A. I'm sorry; I can't find that on the 24 page that I'm looking at. Could you show me 25 where it is in the underlying document, if you</p>

<p style="text-align: right;">4377</p> <p>1 could move that box.</p> <p>2 Q. I think if you go to page 5.</p> <p>3 A. Yes, I'm on page 5.</p> <p>4 Q. And on the right-hand side, right</p> <p>5 before the final paragraph.</p> <p>6 A. I have a different page. You handed</p> <p>7 me page 5 open and that is not this page.</p> <p>8 MR. GARRETT: May I approach again,</p> <p>9 your Honor?</p> <p>10 JUDGE BARNETT: Certainly.</p> <p>11 THE WITNESS: The pagination is</p> <p>12 different than the one on the screen.</p> <p>13 BY MR. GARRETT:</p> <p>14 Q. The question I was going to ask you is</p> <p>15 you haven't read this decision before, have</p> <p>16 you?</p> <p>17 A. No.</p> <p>18 Q. You are not familiar with it at all?</p> <p>19 A. No.</p> <p>20 Q. You're not certain how the D.C.</p> <p>21 Circuit has treated viewing in these</p> <p>22 proceedings?</p> <p>23 A. No.</p> <p>24 MR. GARRETT: Okay. I have no further</p> <p>25 questions, your Honor. Thank you Ms. Hamilton.</p>	<p style="text-align: right;">4379</p> <p>1 A. Yes.</p> <p>2 Q. And so one constituency might set the</p> <p>3 dial to, say, the local PBS affiliate to watch</p> <p>4 both the national programming and the unique</p> <p>5 content of that affiliate?</p> <p>6 A. Yes, that's correct.</p> <p>7 Q. And a different constituency might do</p> <p>8 the opposite; have the local affiliate channel</p> <p>9 for whatever programming it offers and then</p> <p>10 just keep watching the national programming</p> <p>11 there, as well?</p> <p>12 A. Yes.</p> <p>13 Q. So, in effect, these different</p> <p>14 constituencies of cable subscribers might have</p> <p>15 sort of brand loyalty to one channel or</p> <p>16 another?</p> <p>17 A. That's accurate.</p> <p>18 Q. Another result though is they'll stick</p> <p>19 to that particular signal or brand for both the</p> <p>20 network programming and the unique programming?</p> <p>21 A. That would make sense to me, yes.</p> <p>22 Q. So even if some content might be</p> <p>23 duplicated on the two separate channels, there</p> <p>24 is some value to carrying both signals?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">4378</p> <p>1 THE WITNESS: Thank you.</p> <p>2 JUDGE BARNETT: Who is next? Not</p> <p>3 everyone at once.</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MR. HUNZIKER:</p> <p>6 Q. Hi, Ms. Hamilton. My name is Rob</p> <p>7 Hunziker. I'm asking questions on behalf of</p> <p>8 the Public Television Claimants.</p> <p>9 A. Great.</p> <p>10 Q. The first thing I wanted to talk about</p> <p>11 is that you mentioned in your written Rebuttal</p> <p>12 Testimony that you disagree with Dr. Crawford's</p> <p>13 position that gave a zero value to duplicated</p> <p>14 programming; right?</p> <p>15 A. That's correct.</p> <p>16 Q. And in regard to that, I think you</p> <p>17 referenced a Charter system in Coldwater,</p> <p>18 Michigan, that carries this local PBS affiliate</p> <p>19 and also imports a distant PBS signal. Do you</p> <p>20 remember that?</p> <p>21 A. That sounds right.</p> <p>22 Q. So one reason why you disagree with</p> <p>23 Dr. Crawford's method is because a program</p> <p>24 might be watched by different constituencies on</p> <p>25 different channels; right?</p>	<p style="text-align: right;">4380</p> <p>1 Q. And even some programming that is</p> <p>2 duplicated might be more valuable than, say,</p> <p>3 having a blue screen or black screen and not</p> <p>4 having that content?</p> <p>5 A. I think it would always be more</p> <p>6 valuable, yes.</p> <p>7 Q. And this would apply even to some</p> <p>8 smaller signals, not just the large signals?</p> <p>9 A. I don't see why it wouldn't apply</p> <p>10 equally.</p> <p>11 Q. And now I also wanted to also talk a</p> <p>12 little bit about legacy carriage. So you</p> <p>13 mentioned that it is very difficult for a CSO</p> <p>14 to drop a channel once they've begun carrying</p> <p>15 it, because subscribers might leave; right?</p> <p>16 A. It's difficult, yes.</p> <p>17 Q. And so a CSO would need to think long</p> <p>18 and hard about whether or not to add program --</p> <p>19 or add a signal before doing so?</p> <p>20 A. Yes.</p> <p>21 Q. So they want to focus on something</p> <p>22 like what value that signal could add to their</p> <p>23 particular system?</p> <p>24 A. I would agree.</p> <p>25 Q. And you would agree, then, that if a</p>

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1 CSO chooses to carry one station instead of  
2 another, that that reflects the belief that  
3 that station is going to add more value to  
4 their particular system than the other station  
5 they did not choose to carry?  
6 A. If you are talking about two distant  
7 signals.  
8 Q. Right.  
9 A. Yes, I would agree.  
10 Q. And along the same lines, wouldn't you  
11 agree that if a CSO were to continue to carry a  
12 signal -- a distant signal, wouldn't that  
13 reflect a choice that there is more value to  
14 continuing to carry that signal than to replace  
15 it with some other distant signal?  
16 A. I don't know if the decision is to --  
17 would be to replace it with another distant  
18 signal or to take it off and not replace it.  
19 But I would agree that it reflects the  
20 cost-benefit analysis of being a positive  
21 factor for that MSO.  
22 Q. Okay. Thank you. So the last topic I  
23 want to talk to you about is viewing. We were  
24 just discussing this. And you mentioned in  
25 your written testimony that viewing information

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1 is very important to cable operators when  
2 assigning values to the possible signal to  
3 carry; correct?  
4 A. Yes.  
5 Q. Actually, I think you said earlier it  
6 might be the most important?  
7 A. Yes.  
8 Q. And when you're a CSO, or a system  
9 operator, who is making carriage decisions,  
10 they wouldn't contemplate adding a new signal  
11 without considering viewing data; right?  
12 A. To the extent that it's available,  
13 they would want to consider it, yes.  
14 Q. And that would include something like  
15 Nielsen data or some comparable measurement?  
16 A. Yes.  
17 Q. And so let's say hypothetically you  
18 were considering a distant signal to add and  
19 just learned that one of the dramas on it had  
20 just become one of the biggest hits on  
21 television. That would allow the  
22 decision-maker to assign more value to that  
23 particular signal than previously?  
24 A. I -- yes, I think that's correct.  
25 MR. HUNZIKER: I have no further

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1 questions.  
2 JUDGE BARNETT: Commercial Television,  
3 you look like you are ready.  
4 MR. MacLEAN: No questions, your  
5 Honor.  
6 JUDGE BARNETT: No questions.  
7 Canadian group?  
8 MR. SATTERFIELD: No questions, your  
9 Honor.  
10 JUDGE BARNETT: I'm sorry; there you  
11 are. Devotionals? No questions?  
12 Redirect, Ms. Plovnick?  
13 MS. PLOVNIK: I have just one  
14 question, I think.  
15 JUDGE BARNETT: You could have two.  
16 (Laughter.)  
17 MR. STEWART: She doesn't have time  
18 for two.  
19 (Laughter.)  
20 MS. PLOVNIK: Excuse me one moment,  
21 your Honor. Thank you, your Honors. And it  
22 was faster than I had expected.  
23 BY MS. PLOVNIK:  
24 Q. All right. So Ms. Hamilton, I just  
25 really briefly wanted talk about something that

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1 you discussed with Mr. Garrett. And I will  
2 refer you to -- he talked with you about the  
3 WGNA Programming Summary for 2010 and he asked  
4 you some questions about whether or not you had  
5 considered that in forming your conclusions.  
6 I just want to ask you to refer to  
7 Exhibit 6009, which is your Rebuttal Testimony  
8 for this proceeding and take a look at page 8  
9 and Footnote 1, and I wanted to know if that  
10 refreshes your recollection regarding this  
11 topic.  
12 A. I'm sorry; what page?  
13 Q. Exhibit 6009, page 8, and paragraph  
14 under Subheading C and Footnote 1.  
15 A. Yes. Yes.  
16 Q. It refreshes your recollection?  
17 A. Yes.  
18 Q. Did you take the WGNA Programming  
19 Summaries into account in forming your opinion  
20 about the Bortz survey and volume?  
21 A. Yes.  
22 Q. And what was your opinion?  
23 A. It's -- it really didn't have an  
24 effect. It was disclosed only to those  
25 28.25 percent of those systems.

<p style="text-align: right;">4385</p> <p>1        Q.    All right. Thank you, your Honor,  2        that was the only question I had.  3        JUDGE BARNETT: Anything from the  4        Judges?  5        Thank you, Ms. Hamilton. You may be  6        excused.  7        Mr. Dove?  8        MR. DOVE: Your Honor, over the  9        weekend as we were watching basketball games  10       and Public Television programming --  11       (Laughter.)  12       MR. DOVE: -- the parties tried to  13       reach an agreement. We are still in the  14       process of reaching an agreement of a proposal  15       to make with regard to dates for post-trial  16       briefing and closing arguments. We are very  17       close to reaching an agreement, I think. So if  18       we had another 5 or 10 minutes to consult, we  19       might be able to present it to you, if that is  20       something that your Honors wish to have from us  21       at this point, it would be helpful.  22       JUDGE BARNETT: It would be very  23       helpful, because I was going to hold you  24       captive for another ten minutes to tell you  25       what our thoughts were on that. We would like</p>	<p style="text-align: right;">4387</p> <p>1       give you my prepared remarks regarding these  2       very issues.  3       We do intend to schedule closing  4       arguments after you have had the opportunity to  5       submit proposed findings and proposed  6       conclusions of law. Our calendar, as you are  7       aware -- because most of you will be spending a  8       lot of time with us this year -- is quite full.  9       And we also are working with a statutory  10       deadline, which is 11 months from the date of  11       your joint settlement conference report. And I  12       should have looked that up when I was  13       backstage, but I did not. But I'm sure you  14       know what that is and you know that it takes us  15       a while to prepare these determinations.  16       We will confer concerning your  17       proposals and enter an order today directing  18       the dates for filing of proposed findings and  19       proposed conclusions.  20       We can tell you now that you will be  21       disappointed by our limitations. We felt that  22       it was necessary for us to impose strict  23       limitations, because in the past few  24       proceedings we have received over a thousand  25       pages from one participant and there isn't any</p>
<p style="text-align: right;">4386</p> <p>1       to have your input. Five minutes, and let us  2       know when you are ready. Thank you.  3       (A recess was taken at 11:49 a.m.,  4       after which the trial resumed at 12:11 p.m.)  5       JUDGE BARNETT: Mr. Dove, you are the  6       designated spokesperson.  7       MR. DOVE: Regrettably so, your Honor.  8       We were able to reach agreement on most  9       matters. We would propose that most findings  10       of fact and conclusions of law be due on Friday  11       April 27th; that reply findings be due on  12       May 15th; that there be a page limit imposed of  13       100 pages for the proposed findings of fact and  14       60 pages for the reply.  15       And the only thing we were not able to  16       come to agreement on -- at least not yet -- is  17       a proposed date for closing arguments. Not  18       knowing the Judges' preferences, but also we  19       have a number of conflicts, business conflicts  20       between May 15th and Memorial Day that made it  21       difficult to reach an agreement at this time on  22       that issue.  23       JUDGE BARNETT: Thank you. We will  24       take those requests under advisement. And I  25       will, without filling in the dates, nonetheless</p>	<p style="text-align: right;">4388</p> <p>1       way we can handle that volume of material.  2       So we are not going to permit that  3       kind of -- your limits are admirable, and I  4       appreciate that, but in this instance, in this  5       proceeding, we are directing that each  6       participant file proposed findings of fact with  7       direct reference and citations to the record in  8       this proceeding. Each proposed finding of fact  9       must be relevant and material to the  10       determination the Copyright Act requires the  11       Judges to make. Each participant shall propose  12       conclusions of law that relate directly to the  13       legal standards guiding the Judges'  14       determination.  15       Proposed conclusions of law may be  16       derived from statute, regulation, applicable  17       precedent, or other primary or secondary legal  18       authority. Participants shall support each  19       proposed conclusion of law with one or more  20       citations to relevant authority.  21       The Judges are not accepting closing  22       briefs. Participants must not use their  23       valuable word limits that we are setting for  24       proposed findings of fact and for proposed  25       conclusions of law to advocate or argue for or</p>

<p style="text-align: right;">4389</p> <p>1    against a particular finding or conclusion.  2        You are all very talented and very  3    experienced. You know the difference between a  4    finding of fact, a conclusion of law, and an  5    argument or advocacy. What we are accepting is  6    proposed findings of fact and proposed  7    conclusions of law.  8        The argument or advocacy certainly  9    will happen during the oral argument at the  10   conclusion, and we're not limiting that.  11        Now, I'll be more precise. If one  12   participant proposes a finding of fact with  13   reference to the record that is contrary to  14   another participant's proposed findings of fact  15   also with reference to the record, that is to  16   be expected in an adversarial proceeding. The  17   Judges will weigh the evidence proffered by  18   each participant and make a finding upon which  19   they will rely in making their final  20   determination.  21        Likewise, each party may propose  22   conclusions of law, supporting each proposed  23   conclusion with a reference to pertinent legal  24   authority or authorities. Participants are not  25   permitted to contest an opposing party's</p>	<p style="text-align: right;">4391</p> <p>1    findings and proposed conclusions to contest  2    another party's position, you will have an  3    opportunity to file a responsive submission,  4    and we will have a date for that, at your  5    discretion. It's not required. But each  6    participant may file one response addressing in  7    the response its position with regard to the  8    other party's initial proposed findings and  9    proposed conclusions.  10        Responsive submissions will be limited  11   to 7,500 words total. For example, if a  12   participant spends 6,500 words opposing another  13   party's proposed findings of fact, then that  14   participant will have 1,000 words left to  15   respond to other parties' proposed conclusions  16   of law.  17        Each submission must include response  18   to all other opposing parties. In other words,  19   no participant may submit more than one  20   responsive submission. We don't want MPAA's  21   response to the Sports, and MPAA's response to  22   the Devotionals, and MPAA's response to the  23   Canadians. We want one response. And Mark  24   Twain, or any of the other people who have been  25   attributed with the comment, as they would say:</p>
<p style="text-align: right;">4390</p> <p>1    proposed legal conclusions.  2        The Judges will study the parties'  3    proposed conclusions of law, determine which  4    are applicable to the task of making the  5    determination in this phase of this proceeding,  6    and adopt or modify the conclusions according  7    to the Judge's own reasoning and the reasoning  8    of the panel.  9        The next sentence is where we had  10   filled in a date, which we will skip over until  11   we have had a chances to confer about your  12   proposed dates.  13        We have set an aggregate word limit  14   for both submissions -- that is proposed  15   findings and proposed conclusions -- of  16   25,000 words. Participants may exercise their  17   discretion when allocating the 25,000 words  18   between findings and conclusions.  19        Those words are exclusive of the table  20   of contents, table of authorities, signature  21   page, if that's all that is on the page -- and  22   certificate of service, which I think the  23   electronic system does now.  24        Now, even though I did say at the  25   outset that you don't use your proposed</p>	<p style="text-align: right;">4392</p> <p>1    I would have written a shorter letter, but I  2    didn't have enough time. Well, we are going to  3    be sure you have enough time to write these  4    concisely so that they are impactful without  5    being heavy. Although it is electronic now, we  6    don't have to heft around a thousand pages, but  7    you know what I mean.  8        Proposed findings and conclusions, as  9    well as the responsive submissions, must  10   conform to the paragraph numbering requirements  11   of our procedural rule, which is 37 CFR  12   Section 351.14, paragraph C. Each paragraph in  13   a response must likewise indicate the paragraph  14   numbers to which each response corresponds.  15        Each responsive paragraph must also  16   contain citations to the record in relation to  17   proposed findings and legal citations in  18   relation to proposed conclusions of law.  19        You are going to have to use initials,  20   because I'm certain that paragraph numbers will  21   run parallel. So use initials for which  22   party's paragraph number you are opposing or  23   responding to.  24        Participants must not include in  25   either their proposed findings or conclusions,</p>

<p style="text-align: right;">4393</p> <p>1 or their responsive filings, other paragraphs  2 or arguments. Only those that are responsive  3 directly to another -- excuse me, I didn't mean  4 -- I am only talking now about the responses --  5 only paragraphs that are responsive to other  6 parties' proposals.  7 Submissions, when we receive them,  8 including proposals and responses thereto, will  9 be included in the record of this proceeding  10 and we will have a transcript of closing oral  11 argument.  12 Other than that, I believe it is  13 incumbent upon me to say now that this record  14 is closed with those exceptions.  15 Any questions?  16 Mr. Satterfield?  17 MR. SATTERFIELD: Your Honor, on the  18 first day of the hearing, we informed the Court  19 that we had two videos that we did not upload  20 to the Court's -- to the docket, to the  21 electronic docket. I didn't realize we could  22 do it. And we requested permission to upload  23 them as restricted and you were taking that  24 under advisement. I don't know if you had  25 considered that any more or sort of forgot</p>	<p style="text-align: right;">4395</p> <p>1 talk about it afterward.  2 JUDGE BARNETT: Right.  3 MR. SATTERFIELD: I will say that my  4 initial concern was that I know in the past  5 submissions to the CRP have been available if  6 you just did a Google search. But I believe  7 now, since you have to actually log into the --  8 you have to hit an accept that actually gets to  9 the docket, those pleadings don't seem to  10 appear in just normal Internet searches. So  11 some of my concern has been alleviated. The  12 whole electronic docket system is brand new to  13 us.  14 JUDGE FEDER: And us.  15 JUDGE BARNETT: But it is available to  16 the public.  17 MR. SATTERFIELD: Yes.  18 JUDGE BARNETT: A guest user can sign  19 on and look at what is in the record --  20 MR. SATTERFIELD: Yes, that's correct.  21 JUDGE BARNETT: -- signing in and  22 being a participant.  23 MR. SATTERFIELD: That is, as you  24 know, our program is licensed in Canada, not in  25 the United States. That was my immediate</p>
<p style="text-align: right;">4394</p> <p>1 about it.  2 JUDGE BARNETT: Completely forgot  3 about it, to be honest. Was there any  4 objection to those?  5 MR. SATTERFIELD: No.  6 JUDGE BARNETT: No? You need to have  7 someone at your office then confer with  8 Ms. Blaine or Ms. Whittle to make sure that  9 happens. Since we have given prior permission,  10 those can be included in the record.  11 MR. SATTERFIELD: Right. Thank you,  12 your Honor.  13 JUDGE BARNETT: The outstanding  14 question about whether it could be restricted?  15 MR. SATTERFIELD: Yes.  16 JUDGE BARNETT: I don't know if  17 Ms. Whittle received a response -- did you ask  18 of NIC whether we could restrict the video?  19 JUDGE FEDER: I don't know if it was a  20 technical question or if it was a question of  21 restriction, not confidentiality, but there was  22 a question about Copyright issues.  23 JUDGE BARNETT: Thank you, Judge  24 Feder.  25 MR. SATTERFIELD: You said we would</p>	<p style="text-align: right;">4396</p> <p>1 concern.  2 JUDGE BARNETT: I think in that  3 circumstance, we have to restrict it because  4 it's not licensed for broadcast here. So we  5 will do that.  6 MR. SATTERFIELD: Thank you, Your  7 Honor.  8 JUDGE BARNETT: You may do that. And  9 if you have difficulty --  10 MR. SATTERFIELD: I will submit it as  11 designated as restricted, when we have uploaded  12 it.  13 JUDGE BARNETT: Thank you, and I  14 apologize for not keeping that in the  15 forefront. I am glad that we resolved that.  16 MR. SATTERFIELD: Not a major issue.  17 JUDGE BARNETT: Anything further?  18 Thank you all. We will see you again, sooner  19 rather than later, I'm sure. And some of you  20 we will see even sooner than that.  21 Let me just say -- unfortunately, I  22 don't see any clients here still, but I always  23 like to say, when I have the opportunity to  24 your clients, that they have been well  25 represented. I can't always say that, but I</p>

<p style="text-align: right;">4397</p> <p>1 can say that with confidence in this  2 proceeding. It's been a very professional and  3 collegial proceeding, and I appreciate all the  4 courtesies you have extended to one another.  5 And we will at this point recess until  6 time for closing arguments. Thank you.  7 (The hearing was recessed at 12:26  8 p.m., to reconvene at a time to be  9 announced.)  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">4399</p> <p style="text-align: center;">1 CERTIFICATE  2  3  4 I certify that the foregoing is a true and  5 accurate transcript, to the best of my skill and  6 ability, from my stenographic notes of this  7 proceeding.  8  9  10 3/19/18 Joe Strickland  11 Date Signature of the Court Reporter  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">4398</p> <p>1 C O N T E N T S  2 WITNESS: DIRECT CROSS REDIRECT VOIR DIRE  3 SUE HAMILTON  4 By Ms. Plovnick 4282  5 By Mr. Garrett 4338  6 By Mr. Hunziker 4378  7  8 CONFIDENTIAL SESSIONS: NONE  9  10 E X H I B I T S  11 EXHIBIT NO: MARKED/RECEIVED REJECTED  12 1146 4364  13 1150 4354  14  15  16  17  18  19  20  21  22  23  24  25</p>	



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